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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1024

SIXTY-SEVENTH MINNESOTA STATE SENATE,
Appellant-Intervenor,

vs.

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN,
Appellees,

ARLEN ERDAHL, GEORGE B. HICKEY, CHARLES LeFEBVRE, JOSEPH W. NOTERMAN, and WILLIAM J. SCHNEIDER,
Appellees,

ROLLIN H. CRAWFORD, JAMES M. KING, and ROBERT C. VOSS,
Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

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SIXTY-SEVENTH MINNESOTA STATE SENATE,

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RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN,

Appellees,

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Appellees,

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Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

Introduction

Appellant, the Sixty-seventh Minnesota State Senate, brings this direct appeal from the findings and order entered November 15, 1971, by a statutory three-judge United States District Court for the District of Minnesota. The findings and order appealed contained a declaration and finding that Minnesota Statutes 1969, §§ 2.021-2.712, violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. Further, the Court enjoined Minnesota's Secretary of State and the county auditors of the State of Minnesota from conducting any future elections for membership in the Minnesota State Legislature pursuant to the statutes declared invalid. On December 3, 1971, the District Court issued an order announcing its determination to reduce significantly the number of legislative districts. Appellant submits this Statement to show that this is a direct appeal over which this Court has jurisdiction, and that the appeal presents important and substantial federal questions which merit plenary review.

Citation to Opinions Below

The findings and order of November 15, 1971 and the order of December 3, 1971, issued by the District Court for the District of Minnesota are not as yet reported. They are set out in the Appendix, *infra*., at pp. A-3, A-6.

Jurisdiction

(i) This is a legislative apportionment case. Appellees (the original plaintiffs below) Richard A. Beens, Phillip Krass, and Lawrence E. Meuwissen, brought this action in

the District Court for the District of Minnesota pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1343 (3) and 1343 (4). Plaintiff-appellees sought, among other things, to enjoin the application of Minnesota Statutes 1969, § 2.031, as violative of the Fourteenth Amendment to the United States Constitution. A statutory three-judge United States District Court was requested and convened pursuant to 28 U.S.C. § 2281. Appellant, the Sixty-seventh Minnesota State Senate, intervened as a party defendant pursuant to Rule 24(a) of the Federal Rules of Civil Procedure.

(ii) This is an appeal from the order of the three-judge District Court, entered on November 15, 1971, enjoining the application of Minnesota Statutes 1969, § 2.031 to future legislative election (App. at A-3). Of necessity, if the application of Minnesota Statutes 1969, § 2.031, prescribing the number of legislative districts, was erroneously declared violative of the Fourteenth Amendment and enjoined, the District Court lacked jurisdiction to issue its order of December 3, 1971, announcing its intent to reduce significantly the number of legislative districts (App. at A-6). The District Court denied the motion of appellant for amended findings of fact and conclusions of law on December 21, 1971. On December 13, 1971, appellant filed with the District Court for the District of Minnesota a notice of appeal to this Court (App. at A-1).

(iii) Jurisdiction of this Court to review by direct appeal an order of a three-judge District Court granting a permanent injuncton is conferred by 28 U.S.C. § 1253.

(iv) Cases which sustain the jurisdiction of this Court are: *Ely v. Klahr*, 403 U.S. 108 (1971); *Perez v. Ledesma*, 401 U.S. 82 (1971); *Swann v. Adams*, 385 U.S. 440 (1967); *Reynolds v. Sims*, 377 U.S. 533 (1964).

Statutes Involved

Minnesota Statutes 1969, § 2.031, subd. 1 provides:

> The representatives in the senate and house of representatives are apportioned throughout the state in 67 legislative districts.

The remaining Minnesota statutory provisions pertaining to legislative apportionment which were also declared unconstitutional and made the subject of injunctive relief are set out in the Appendix, *infra.*, at p. A-15.

Question Presented

Whether the three-judge District Court erred in enjoining the application, in future legislative elections, of Minnesota Statutes 1969, § 2.031, which prescribes the number of legislative districts, as violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution and, as a direct consequence thereof, mandating a significant reduction in the number of legislative districts.

Statement of the Case

Appellees, Richard A. Beens, Phillip Krass and Lawrence E. Meuwissen, residents and qualified voters, instituted this action in the District Court for the District of Minnesota pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1343 (3) and 1343 (4) for the following relief: (1) a declaratory judgment that Minnesota Statutes 1969, §§ 2.021-2.712, violated the equal protection clause of the Fourteenth Amendment to the United States Constitution; (2) an injunction prohibiting the Minnesota Secretary of State and all county

auditors of the State of Minnesota from conducting any future elections for membership in the Minnesota State Legislature pursuant to Minnesota Statutes 1969, §§ 2.021-2.712; (3) in the absence of the enactment of a constitutionally valid legislative apportionment plan by the Minnesota Legislature, a plan of legislative apportionment promulgated by the District Court. A three-judge United States District Court was convened pursuant to 28 U.S.C. § 2281. Appellant, the Sixty-seventh Minnesota State Senate, intervened as a party defendant pursuant to Rule 24(a) of the Federal Rules of Civil Procedure. Appellees Rollin H. Crawford, James M. King, and Robert C. Voss intervened as parties plaintiff pursuant to Rule 24(a) of the Federal Rules of Civil Procedure.

On November 15, 1971, the District Court declared Minnesota Statutes 1969, §§ 2.021-2.712 violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution and ordered the Secretary of State of the State of Minnesota and all county auditors thereof enjoined from conducting any future legislative elections pursuant to the statutes declared unconstitutional (App. at A-3).

Subsequently, on December 3, 1971, the District Court announced its fixed intent to promulgate a plan of legislative apportionment employing 35 legislative districts. The parties were permitted to submit proposed legislative apportionment plans for the consideration of the Court. It is significant that the Court itself initiated consideration of the subject of the number of legislative districts. All parties, including the original plaintiffs, forcefully opposed a reduction in the number of legislative districts in both written briefs and oral argument. The parties unanimously asserted that the District Court, acting on its own motion, lacked jurisdiction to reduce the number of legislative districts.

Pursuant to Minnesota Statutes 1969, § 2.031, declared unconstitutional and made the subject of a permanent injunction, the members of the State Senate and the House of Representatives were apportioned throughout the state in 67 legislative districts. Though not expressly termed an injunction, the order of December 3, 1971, significantly reducing the number of legislative districts, is tantamount thereto, since it prohibits the submission of legislative apportionment plans providing for any other number of state senators and representatives. If the District Court erred in declaring Minnesota Statutes 1969, § 2.031 unconstitutional and enjoining its application, it follows as a necessary consequence that the order of December 3, 1971, significantly reducing the number of legislative districts is void as exceeding the jurisdiction of the District Court.

On December 13, 1971, appellant moved the District Court for amended findings of fact and conclusions of law and for modification of both the permanent injunction issued on November 15, 1971 and the order of December 3, 1971 significantly reducing the number of legislative districts. Appellant contended that Minnesota Statutes 1969, § 2.031, prescribing the number of legislative districts, raised no constitutional question, was severable from those provisions which allocate senators and representatives among described districts, pursuant to Minnesota Statutes 1969, § 645.20, and, hence, the District Court improperly enjoined its application. On December 23, 1971 the District Court issued an order denying the motion (App. at A-13).

Appellant brings this appeal to review the scope of the injunctive relief granted and the supplementary order of December 3, 1971, significantly reducing the numbers of legislative districts, issued as a direct consequence of the broad injunction granted.

The Questions Are Substantial

This appeal presents a question fundamental to the constitutional doctrine of federalism. The three-judge District Court declared unconstitutional and enjoined the prospective application of Minnesota Statutes 1969, § 2.031, subd. 1 which provides:

> The representatives in the senate and house of representatives are apportioned throughout the state in 67 legislative districts.

As a direct consequence of its declaration and injunction, the District Court ordered a significant reduction in the number of legislative districts. The District Court apparently predicated its action solely on a preference for a significantly smaller State Legislature in contravention of an established state policy. The fundamental question at issue is whether, in an action brought to declare the Minnesota legislative apportionment statutes violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution and to enjoin their future application, wherein no party questioned the basic constitutionality of the number of Minnesota legislative districts, a United States District Court possesses jurisdiction, arbitrarily and without a scintilla of evidence in the record and over the objection of all the parties, to order a significant reduction in the number of legislative districts by enjoining the application of an otherwise unchallenged state statute prescribing the number of legislative districts. A decision by this Court is essential to remedy at the earliest opportunity, such an unprecedented usurpation of state legislative authority.

1. Under the constitutional doctrines of separation of powers and the division of powers between the state and federal

governments, legislative apportionment is primarily a matter within the sole discretion of the Legislature:

> And it [the United States District Court for the Middle District of Alabama] correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. *Reynolds v. Sims*, 377 U.S. 533, 586 (1964).

See *Ely v. Klahr*, 403 U.S. 108 (1971); *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 676 (1964); *Wold v. Anderson*, 327 F. Supp. 1343, 1344 (D. Mont. 1971); *Butterworth v. Dempsey*, 237 F. Supp. 302, 308 (D. Conn. 1965); *Herweg v. Thirty-ninth Legislative Assembly of the State of Montana*, 246 F. Supp. 454, 456, 458 (D. Mont. 1965).

The Minnesota Constitution clearly makes legislative apportionment a prerogative of the state legislative process. Article IV, Section 23 of the Minnesota Constitution provides:

> The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state, and also have the power at their first session after each enumeration of the inhabitants of this state made under the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article.

Article IV, Section 2 of the Minnesota Constitution, in relevant part, provides:

> The number of members who compose the Senate and House of Representatives shall be prescribed by law. . . .

This Court has expressly recognized that the prescription of election districts is a matter committed initially to the state legislative process. *Smiley v. Holm*, 285 U.S. 355 (1932).

Judicial intervention in this matter of particular legislative concern is justified only to the limited extent necessary to vindicate demonstrated constitutional rights. *Kilgarin v. Martin*, 252 F. Supp. 404, 446 (D. Tex. 1966). As this Court stated in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971), relied upon by the District Court to support its equitable authority to reduce the number of State legislative districts:

> . . . The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution.
>
> In seeking to define even in broad and general terms how far this remedial power extends, it is important to remember that judicial powers may be exercised only on the basis of a Constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of . . . authorities whose powers are plenary. Judicial authority enters only when local authority defaults.

A court may not utilize the occasion to implement a particular political philosophy, no matter how sincerely held, in derogation of legislative authority and recognized state apportionment policy.

2. The jurisdiction of the District Court is predicated solely on the ground that the state statutes prescribing the legislative districts, Minnesota Statutes 1969, § 2.041-2.712, violate the equal protection clause of the Fourteenth Amend-

ment to the United States Constitution. This Court has consistently held that a system of legislative apportionment which dilutes the voting strength of portions of the electorate and augments the voting strength of other portions of the electorate as a consequence of population variances between the legislative districts is violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. *Whitcomb v. Chavis*, 403 U.S. 124, 141 (1971); *Wells v. Rockefeller*, 394 U.S. 542 (1969); *Reynolds v. Sims*, 377 U.S. 533 (1964). Hence, the sole constitutional issue for determination by the District Court in the present context was whether the legislative districts prescribed by state statute contained substantially equal populations. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). The District Court, however, refused to accept the limited concept of the proper scope of constitutional inquiry articulated in the decisions of this Court and declared unconstitutional and enjoined the application of Minnesota Statutes 1969, § 2.031, which embodies a public policy of more than fifty years duration that, for purposes of legislative apportionment, the state be divided into 67 legislative districts. Certainly, not even the broadest reading of the decisions of this Court relating to legislative reapportionment sanction such a calculated disregard for state apportionment policy.

3. Absent proof of invidious discrimination or substantial population disparities between legislative districts, legislative apportonment policy is entirely a matter of state interest beyond the jurisdiction of the federal courts. *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971); *Reynolds v. Sims*, 377 U.S. 533, 579 (1964); *Connor v. Johnson*, 330 F. Supp. 506, 507 (S.D. Miss. 1971). More particularly, the number of legisla-

tive districts provided for by state law raises no constitutional question of equal protection under the Fourteenth Amendment to the United States Constitution cognizable by the federal judiciary unless the number of districts so prescribed, or constitutional or statutory limitations on the method of apportionment, render significant population deviations between legislative districts unavoidable.

This Court, in recognition of such a fundamental premise, has stated without equivocation:

> Determining the size of its legislative bodies is of course a matter within the discretion of each individual state. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies. *Reynolds v. Sims*, 377 U.S. 533, 581, n. 63 (1964).

A three-judge District Court for the Southern District of Mississippi has also articulated the constitutional concept that the number of legislative districts prescribed by law is a matter of state concern without federal constitutional implications. *Connor v. Johnson*, 330 F. Supp. 506, 507 (S.D. Miss. 1971).

Since the number of legislative districts prescribed by state law is entirely a matter of state interest without federal constitutional implications, the District Court lacked jurisdiction to arbitrarily and capriciously brush aside the controlling determination of state apportionment policy that the State of Minnesota be divided into 67 legislative districts, unless it could be demonstrated that such a policy rendered substantial population deviations between legislative districts unavoidable:

When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960). The record is barren of any fact even remotely tending to support such a conclusion.

The population of the State of Minnesota on April 1, 1970 was 3,805,069. *The United States Bureau of the Census, Pub. No. PC-(V-1)-25.* It is self-evident that the public policy embodied in Minnesota Statutes 1969, § 2.031, subd. 1, apportioning the representatives in the State Senate and House of Representatives among 67 legislative districts, may be accomplished on the basis of substantial population equality between legislative districts.

4. The only conceivable basis on which the District Court could have declared unconstitutional and enjoined the application of Minnesota Statutes 1969, § 2.031 was that the section was so connected with the statutes prescribing legislative districts, Minnesota Statutes 1969, §§ 2.041-2.712, that it lacked independent significance. Clearly, even this tenuous justification does not bear close scrutiny. Minnesota Statutes 1969, § 2.031 is declarative of a state policy of more than 50 years standing that the representatives in the Senate and House of Representatives be apportioned throughout the state in 67 legislative districts, irrespective of the configuration of the districts prescribed by law. Laws 1913, Chapter 91; Laws 1917, Chapter 217; Extra Session Laws 1959, Chapter 45; Extra Session Laws 1966, Chapter 1. Hence, Minnesota Statutes 1969, § 2.031, prescribing the number of legislative districts, possesses meaning independent of the statutes prescribing the configuration of legislative districts.

Moreover, it is clear that Minnesota Statutes 1969, § 2.031 is severable from the statutes which apportion the representa-

tives provided by law among prescribed legislative districts, Minnesota Statutes 1969, §§ 2.041-2.712. Minnesota Statutes 1969, § 645.20 provides:

> Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional, the remaining provisions of the law shall remain valid. . . .

The Minnesota legislative apportionment statutes, Minnesota Statutes 1969, §§ 2.021-2.712, contain no provision stating that the sections thereof should not be severable. That the Minnesota State Legislature intended Minnesota Statutes 1969, § 2.031 to be severable from the sections prescribing the configuration of legislative districts may also be demonstrated by reference to the prior legislative apportionment act, Extra Session Laws 1959, Chapter 45. Extra Session Laws 1959, Chapter 45 contained a provision identical to Minnesota Statutes 1969, 2.031. The last section of Extra Session Laws 1959, Chapter 45, however, provided:

> It is the intent that each provision of sections 1 to 71 *shall not be severable* and that each provision be considered to be essentially and inseparably connected with and dependent upon every other provision. (Emphasis added.)

Extra Session Laws 1966, Chapter 1, Section 71 expressly repealed the quoted nonseverability provision and the current legislative apportionment statutes, Minnesota Statutes 1969, §§ 2.021-2.712, contain no comparable provision.

Since Minnesota Statutes 1969, § 2.031 raises no constitutional question, has independent significance, and is severable from those provisions which prescribe the configuration of legislative districts, Minnesota Statutes 1969, §§ 2.041-2.712,

the District Court erred in declaring Minnesota Statutes 1969, § 2.031 unconstitutional and enjoining its future application. The District Court, evidencing a personal predilection for a significant reduction in the number of legislative districts, invaded an area of exclusive state concern without constitutional justification or authorization for its action.

5. The District Court, having declared Minnesota Statutes 1969, § 2.031 unconstitutional and enjoined its future application, on December 3, 1971, issued an order announcing its fixed intent to promulgate a plan of legislative apportionment dividing the state into 35 equally-populated senatorial districts and dividing each senatorial district into three equally-populated house districts. This order, issued as a direct consequence of the previous order declaring unconstitutional and enjoining the application of Minnesota Statutes 1969, § 2.031 and necessarily dependent thereon, exceeded the jurisdiction of the District Court and constituted an unwarranted substitution of judicial predilection for controlling state apportionment policy. Since 1913 the state has been apportioned into 67 senatorial districts and between 130 and 135 house districts. Laws 1913, Chapter 91; Laws 1917, Chapter 217; Extra Session Laws 1959, Chapter 45; Extra Session Laws 1966, Chapter 1. Minnesota Statutes 1969, § 2.031, erroneously declared unconstitutional and enjoined, clearly mandates 67 senatorial districts in accordance with the controlling state policy first enunciated in 1913. While the number of representative districts is not expressly prescribed, Minnesota Statutes 1969, § 2.021, declarative of state policy, provides:

> For each legislature, until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 135 members.

The District Court declared Minnesota Statutes 1969, § 2.021 violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution on the ground that dividing one senatorial district into three house districts, while all other senatorial districts were divided into two house districts created prohibited population disparities between house districts. Minnesota Statutes 1969, § 2.021 may still be read as declarative of a state policy that the number of representative districts should as nearly approximate the number therein prescribed, 135, as is consonant with the equal protection clause of the Fourteenth Amendment to the United States Constitution. The number of representative districts most closely approximating the number prescribed by Minnesota Statutes 1969, § 2.021 and capable of division on the basis of substantial population equality, as mandated by the due process clause of the Fourteenth Amendment to the United States Constitution, is 134. This number closely approximates the number of representative districts prescribed by law since 1913, is in conformity with Minnesota Statutes 1969, § 2.031, and reflects a considered and controlling state policy binding on the District Court.

The District Court erroneously assumed that its declaration that Minnesota Statutes 1969, § 2.021, which prescribes 135 house districts, violated the equal protection clause of the Fourteenth Amendment to the United States Constitution sanctioned a refashioning of the framework of representative government in the State of Minnesota. The District Court, in ordering a significant reduction in the number of legislative districts, strayed far beyond the exigencies of this particular case and, erroneously covering its mandate with the mantle of the Fourteenth Amendment to the United States Constitution, legislated its own concept of the appropriate number of

legislative districts in derogation of controlling state apportionment policy.

The observation of this Court in *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971), is particularly applicable in the circumstances of this case:

> The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the district court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so.

6. Federal courts fashioning state legislative apportionment plans have, in unusual circumstances, altered the number of legislative districts prescribed by the state constitution or statutes. Such action, however, was only undertaken in extreme circumstances when either the apportionment requirements of the applicable state constitution or statutes rendered it impossible to fashion a plan based on population equality without altering the number of legislative districts, or the applicable apportionment provisions of the state constitution or statutes violated the standard of population equality and contained no severable provision, comparable to Minnesota Statutes 1969, § 2.031. These isolated holdings are clearly distinguishable from the authority assumed by the District Court in these proceedings to alter fundamentally the character of legislative representation in the State of Minnesota solely on the basis of judicial predilection.

In *Schaefer v. Thomson*, 251 F. Supp. 450 (D. Wyo. 1965), the District Court promulgated a plan of legislative apportionment which increased the number of senate districts from 25 to 30. It is significant that the parties stipulated to the number prescribed:

> A membership of thirty senators is the constitutional maximum as determined by the present membership in the State House of Representatives. The parties agreed that the composition of the senate should not exceed thirty members. We acquiesce. *Schaefer v. Thomson*, 251 F. Supp. 450, 452 (D. Wyo. 1965).

The District Court increased the number of senate districts to minimize the necessity for dividing counties in the formation of senate districts. The plan of legislative apportionment promulgated by the District Court divided only one county. Hence, the increase in the number of senate districts served, rather than retarded, a state legislative apportionment policy that, to the extent consistent with the equal protection clause of the Fourteenth Amendment to the United States Constitution, each county should comprise a senate district. Wyoming Constitution, Article 3, Section 3.

In *Paulson v. Meier*, 246 F. Supp. D. N.D. (1965), the District Court adopted a plan of legislative apportionment decreasing the number of senate districts from 53 to 49, and decreasing the number of house districts from 106 to 98. The reduction in the number of senate districts, however, was mandated by Article II, Section 26 of the North Dakota Constitution which provides that the senate shall be composed of 49 members. The reduction in the number of house districts accorded with the state apportionment policy that the number of house districts be twice the number of senate districts. Moreover, the plan of legislative apportionment the District Court promulgated resulted not from its own predilection, but had been formulated under the auspices of the Legislative Research Committee, composed of citizens and members of both houses of the Legislature, and adopted by the state senate.

In the instant case, the District Court arbitrarily brushed aside Minnesota apportionment policy and altered fundamentally the character of legislative representation merely on the strength of its preference for a substantially smaller state legislature.

In *Herweg v. 39th Legislative Assembly of Montana*, 246 F. Supp. 454 (D. Mont. 1965), the District Court promulgated a plan of legislative apportionment reducing the number of senate districts from 56 to 55 and increasing the number of house districts from 94 to 104. The District Court utilized a plan of legislative apportionment, first introduced in the state legislature, that best apportioned the state on the basis of population equality as mandated by the equal protection clause of the Fourteenth Amendment to the United States Constitution, and, yet maintained the integrity of county boundaries. The District Court, in adjusting the number of legislative districts, merely attempted to implement state apportionment policy contained in Article VI, Section 3 of the Montana Constitution which prohibited the division of a county in the formation of representative districts. Only by adopting a plan of legislative apportionment which provided for 104 house districts could the District Court achieve substantial population equality between legislative districts and yet avoid the division of counties in the formation of representative districts. As should be apparent, the District Court exercised a very limited discretion merely to achieve population equality.

In *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz. 1966), the District Court adopted a plan of legislative apportionment decreasing the number of senators from 31 to 30 and decreasing the number of house members from 80 to 60. *Klahr v. Goddard, supra*, is the sole other instance in which a District Court has disregarded state legislative apportionment policy

and implemented its own judicial predilection relative to the number of legislative districts. No party to the proceedings questioned the right of the District Court to reduce significantly the number of house members; nor was the question appealed to this Court due to the imminence of the legislative elections. The District Court clearly exceeded the proper constraints of judicial discretion enunciated by this Court, and, therefore, the decision should be disregarded. *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971); *Reynolds v. Sims*, 377 U.S. 533, 581, n. 63 (1964); *Connor v. Johnson*, 330 F. Supp. 506, 507 (S.D. Miss. 1971).

In contra-distinction to *Klahr v. Goddard, supra*, a proper recognition of state legislative apportionment policy is reflected in those decisions in which federal courts have altered the number of members in existing legislatures by adopting the number of legislative districts established in apportionment plans even though declared violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. *Swann v. Adams*, 263 F. Supp. 225 (D. Fla. 1967); *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 (S.D.N.Y. 1965), *aff'd per curiam*, 384 U.S. 4 (1965).

Conclusion

For the reasons enunciated in this Jurisdictional Statement, this Court should note probable jurisdiction, and set the case down for plenary consideration with briefs on the merits and oral argument.

Respectfully submitted,

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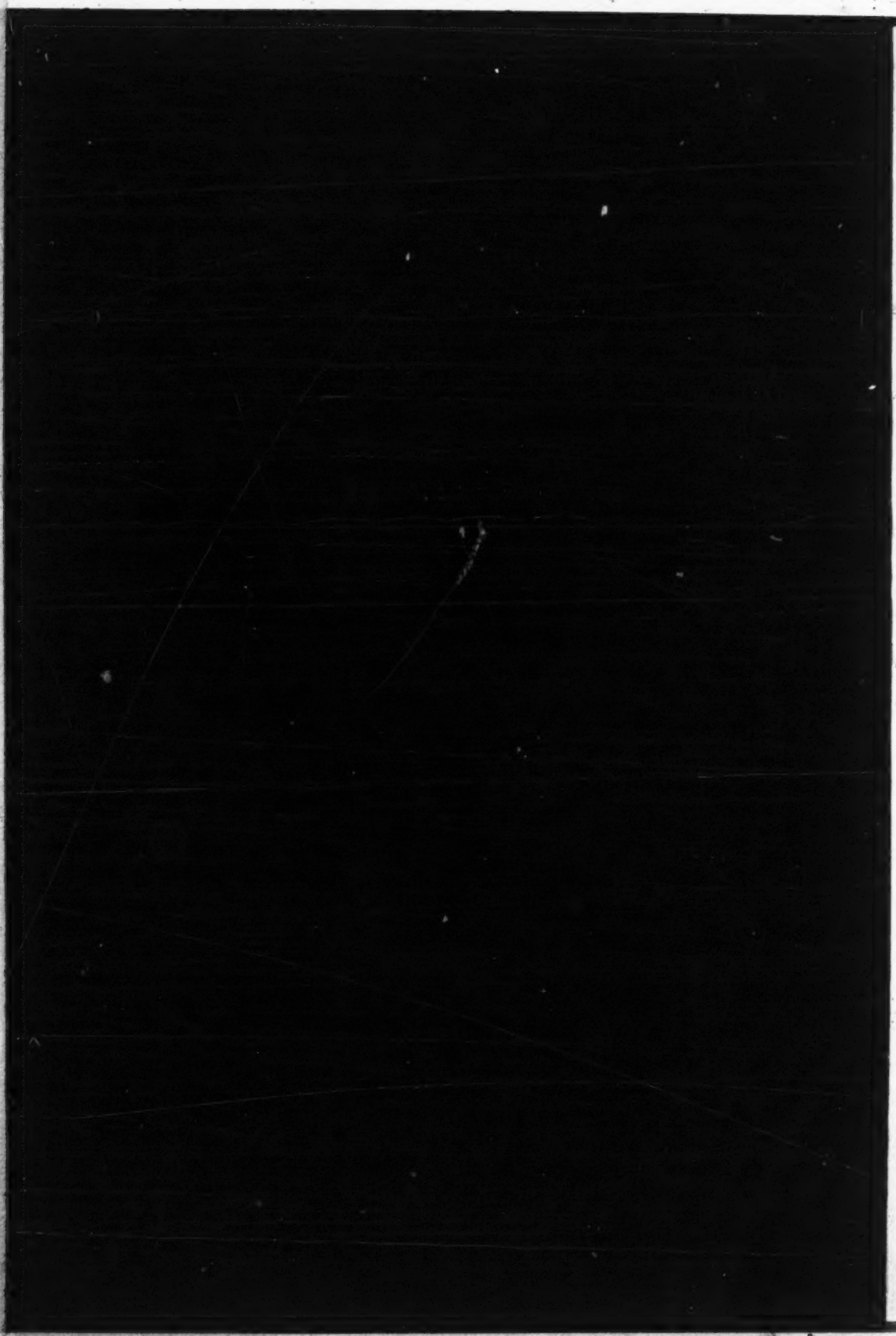

Notice of Appeal to the Supreme Court of the United States from the United States District Court, Filed December 13, 1971.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

RICHARD A. BEENS, et al,
No. 4-71-Civ-151

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota, et al,

Defendants,

THE SIXTY-SEVENTH MINNESOTA STATE SENATE,

Intervenor,

ROLLIN H. CRAWFORD, et al.,

Intervenors.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Sixty-seventh Minnesota State Senate, the defendant in intervention above named,

hereby appeals to the Supreme Court of the United States from the injunction issued in this action on November 15, 1971.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

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Findings and Order of the United States District Court, Granting a Declaratory Judgment, and Issuing a Permanent Injunction, Entered November 15, 1971

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-7-Civ. 151

RICHARD A. BEENS, et al,
Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota, et al.,
Defendants,

THE SIXTY-SEVENTH MINNESOTA STATE SENATE,
Intervenor,

ROLLIN H. CRAWFORD, et al,
Intervenors.

FINDINGS AND ORDER

In light of the submission of pleadings and briefs by all the parties, the hearing held November 5, 1971 before this Court and the filing by the parties of a Stipulation to the relevant statistics, data and computations with respect to the present apportionment of the Minnesota Legislature, the Court makes the following findings:

1. This three-judge Court has proper jurisdiction of the subject matter of this lawsuit. 28 U.S.C. §§1343(3), (4); 42 U.S.C. §1983; 28 U.S.C. §2201, et seq.; 28 U.S.C. §2281; *Swann v. Adams*, 385 U.S. 440 (1967); *Reynolds v. Sims*, 377 U.S. 533 (1964).

2. The present apportionment of the Minnesota Legislature, as set out in Minnesota Statutes 1969 §§2.021 through

2.712, when applied in light of the 1970 Federal Census results has a deviation of 25% or more from the population norm of 56,792 per Senatorial District in 17 of the 67 Senatorial Districts; a deviation of 15% or more in 36 of the 67 Senatorial Districts; the ability of 41.67% of the population of the State of Minnesota to elect a majority of the State Senators; a ratio of 2.49 to 1 between the most populated Senatorial District (District 12-97,760) and the least populated Senatorial District (District 40-39,332); a deviation of 25% or more from the population norm of 28,185 per House District in Districts electing 37 of the 135 members of the State House of Representatives; a deviation of 15% or more in Districts electing 72 of the 135 members of the State House of Representatives; the ability of 40.66% of the population of the State of Minnesota to elect a majority of the members of the State House of Representatives; and a ratio of 3.57 to 1 between the most populated House District (District 12B-60,596) and the least populated House District (District 23A-16,974).

3. The current apportionment of the Minnesota Legislature, giving rise to the disparities enumerated above, clearly fails to meet the standards of the United States Constitution as interpreted by the Supreme Court. See, *e.g.*, *Swann v. Adams*, 385 U.S. 440 (1967); *Davis v. Mann*, 377 U.S. 678 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964). See also, *Whitcomb v. Chavis*, —— U.S. ——, 29 L. Ed. 2d 563, Part VII (June 7, 1971).

4. The Minnesota Legislature adjourned *sine die* on October 30, 1971, and is not scheduled to reconvene until after the 1972 General Elections. Since there is no present reason to believe that the State will enact a new plan of legislative apportionment prior to the 1972 General Elections, this Court finds that it should proceed to adopt an apportionment plan which will pass constitutional muster in time to be implemented in the 1972 General Elections.

Having made the above findings of fact and law, the Court hereby:

DECLARES: Minnesota Statutes 1969, §§2.021 through 2.712 to be in violation of the Constitution of the United States.

ORDERS: the defendants herein, including Arlen Erdahl, Secretary of State of the State of Minnesota and all County Auditors of the State of Minnesota, enjoined from holding or conducting any future elections under the present Apportionment Statutes.

ORDERS: the appointment of Professor Adam C. Breckenridge of Lincoln, Nebraska and Joseph T. Dixon, Jr. of Minneapolis, Minnesota as Special Masters to aid the Court in adopting a new plan of apportionment.

ORDERS: the adoption of the following schedule for proceeding with this matter: November 12, 1971—the final day for the parties and amici curiae to submit to the Court suggested criteria to be used by the Court in adopting a new plan of apportionment; the Court will thereafter announce the criteria it will utilize in reapportioning the State on the earliest possible date; December 7, 1971—the final day for the parties and amici curiae to submit to the Court proposals for reapportioning the State, such proposals to be consistent with the criteria previously announced by the Court; December 21, 1971—the final day for the parties and amici curiae to submit to the Court comments concerning the reapportionment proposals of the other parties and amici curiae; six copies of all suggested criteria, plans of reapportionment and comments with respect to other reapportionment proposals shall be provided to the Court and copies of each shall be served on each of the other parties and amici curiae.

November 15, 1971.

EARL R. LARSON
United States District Judge

Order of the United States District Court Mandating a Significant Reduction in the Number of Legislative Districts, Entered December 3, 1971

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al,

vs.

ARLEN ERDAHL, et al.

ORDER

On November 15, 1971, this Court declared the present legislative apportionment statute of Minnesota, M.S.A. §§2.021 through 2.712, to be invalid and in violation of the Constitution of the United States, and enjoined the conduct of future elections thereunder.

On November 26, this Court established the criteria that would be followed by this Court in reapportioning the Legislature, and asked the parties, intervenors and amicus curiae to submit briefs and to argue orally questions relating to the number of Senate and House Districts into which the State should be apportioned. Oral argument was held on December 2, 1971.

NOW THEREFORE, the Court finds that it best can fulfill its duty of apportioning the Minnesota Legislature in accordance with the Constitution of the United States and with due regard for State policy by:

Dividing the State into 35 equally-populated Senatorial Districts having a population norm of 108,713.

Dividing each Senatorial District into three equally-populated House Districts, having a population norm of 36,238, thus providing for a total of 105 House Districts.

It is, therefore, ORDERED that parties, intervenors and amicus curiae may present plans for apportioning the Legislature in accordance with the criteria set forth in the order of November 26 and the order of today, on or before December 27, 1971, and that they may submit comments on the plans of others on or before January 3, 1972.

It is further ORDERED that the motion of the Americans for Democratic Action, insofar as it asks this Court to require staggered terms for senators, is denied.

It is further ORDERED that the motion of the Minnesota Farmers Union for leave to intervene is denied, but that it is given the right to participate in this proceeding as amicus curiae.

Dated: December 3, 1971.

GERALD W. HEANEY
Judge
United States Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States district Court

EARL R. LARSON
Judge
United States District Court

Memorandum Opinion of the United States District Court in Support of the Order of December 3, 1971

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al.

vs.

ARLEN ERDAHL, et al.

MEMORANDUM IN SUPPORT OF ORDER

We have the unrequested burden of reapportioning the Minnesota Legislature. It is a task that the legislative and executive branches of the State can relieve us of by apportioning the Legislature in accordance with the United States Constitution. But until the State acts, we must fulfill our responsibility.

We recognize that any plan drawn by us will not meet with universal favor and may meet with rather general disfavor. But the duty is ours, and we will meet it.

We have, in our orders of November 26 and December 3, established criteria which the parties, intervenors and amicus curiae are requested to follow in preparing plans to apportion the Legislature. The criteria are those which we find best suited to permit compliance with the equal protection standards of the United States Constitution and with State policy to the extent that the latter is consistent with the Constitution.

The only serious questions, that are raised with respect to the criteria, are whether we have the authority to change the size of the Legislature; and if so, to what extent. Our answer

is that we must change the size if we are to apportion the State in accordance with the Federal and State Constitutions, and that we have a right to make those changes which are consistent with the Federal Constitution and State policy.

It is well settled that Federal Three-Judge Courts have jurisdiction to decree existing apportionment plans invalid. *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). It is equally clear that they have equitable authority to adopt an apportionment plan if the Legislature fails to do so. *Ely v. Klahr*, 403 U.S. 108 (1971); *Whitcomb v. Chavis, supra; Scott v. Germano*, 381 U.S. 407 (1965). And, finally, it is established that they can change the size of the Legislature, in apportioning the State in accordance with federal constitutional requirements.[1] To put it simply:

> "* * * Once a right and a violation have been shown, the scope of a District Court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971). See also, *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

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[1] In the following cases, the federal courts have altered the existing size of a state legislature: *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz. 1966) (Senate reduced from 31 to 30, House from 80 to 60); *Herweg v. 39th Legislative Assembly*, 246 F. Supp. 454 (D. Mont. 1965) (Senate reduced from 56 to 55, apparently increased size of House); *Paulson v. Meier*, 246 F. Supp. 36 (D N.D. 1965) (Senate reduced from 53 to 49, House from 113 to 98); *Schaefer v. Thompson*, 240 F. Supp. 247 (D. Wyo. 1964) (Senate increased from 25 to 30). In other cases, federal courts have altered the size of the existing legislatures by adopting a size establised in new apportionment plans which had been voided for violating the Federal or State Constitution. *Swann v. Adams*, 263 F. Supp. 225 (D. Fla. 1967); *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 (S.D. N.Y.), *aff'd per curiam*, 384 U.S. 4 (1965). These latter two cases are in accord with our view that if the Minnesota Legislature had passed and the Governor had signed an apportionment plan this past year, principles of federalism would strongly compel us to attempt to follow that current and clear expression of State policy as to the size of the Legislature. Such was not the case.

The Legislature cannot be apportioned into 67 Senate Districts and 135 House Districts without violating either the Federal or State Constitutions.

The practice of the last fifty-four years of dividing one Senatorial District into three House Districts, while all other Senatorial Districts are divided into two House Districts, cannot be continued without violating the equal protection requirements.

The alternative of having one at-large House District would be contrary to the provisions of Article 4, Section 24, of the Minnesota State Constitution, which provides that no representative district shall be divided in the formation of a Senate District. Moreover, this alternative would impose an impossible burden on candidates for the at-large seat.

We thus find that the size of the Legislature must be changed, and we consider federal constitutional requirements and State policy to determine the appropriate size.

(1) The larger the population of each Senate and House District, the more closely can the equal protection (one man-one vote) requirements be met and still give effect to the State policy of adhering to the boundaries of political subdivisions. Conversely, the smaller the population of each district, the greater the likelihood that the deviations will be higher than are acceptable or that artificial boundaries will result.

(2) State policy with respect to the size of the Legislature is difficult to discern. The State Constitution does not fix the size. The size has been changed from time to time in the ap-

portionment process;[2] and when it was last changed in 1966, the size was fixed "until a new apportionment shall have been made." Minnesota Statutes, 1969, §2.021. The 1971 Legislative Apportionment Plan was not approved by the Governor, and thus cannot be taken as a current expression of State policy as to size,[3] particularly as the Governor recommended that the size of the Legislature be reduced in a Special Message to the Legislature[4] and vetoed the Legislative Plan.

(3) There is merit in having an odd-numbered Senate and House, particularly as Minnesota is a state with two strong and rather evenly divided political parties. Furthermore, legislative apportionment plans have, more often than not, provided for an odd-numbered Senate and House.[5]

Considering all factors, we find that federal constitutional and State policy requirements can best be harmonized by having 35 Senate Districts and by dividing each Senate District into three House Districts. By so doing, we can best meet

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[2] The size of the Legislature has been changed ten times since 1857. The changes are as follows:

	Senate	*House*	*Total*
1857	37	80	117
1860	21	42	63
1866	22	47	69
1871	41	106	147
1881	47	103	150
1889	54	114	168
1897	63	119	182
1913	67	130	197
1917	67	131	198
1959	67	135	202
1966	67	135	202

1957-58 Minnesota Legislative Manual 127; Laws 1913, Ch. 91; Laws 1917, Ch. 217; Laws 1959, Ch. 45; Laws 1966 Extra Session, Ch. 1.

[3] Under Minnesota law, a legislative apportionment act is subject to the Governor's veto. *Duxbury v. Donovan*, 272 Minn. 424, 138 N.W. 2d 692 (1965).

[4] See this Court's Memorandum in Support of Order, November 28, 1972, n. 2.

[5] See n. 2, *supra*.

equality of population standards, prevent overlapping of Senate and House Districts, and retain an odd number of Senate and House Districts.

We recognize that these purposes might also be met by having a Senate of 45 members and a House of 135 members, or a Senate of 33 members and a House of 99 members. But we feel that we can most closely meet all of the requirements by setting the size at the levels we have.

Furthermore, persuasive arguments have been made that positive benefits to the State will accrue by substantially reducing the size of the Senate and moderately reducing the size of the House. Some of these benefits were outlined in our memorandum of November 26, 1971, and need not be repeated here.

Finally, we repeat that it is not our desire to fix for the future the size of the Senate and the House in Minnesota. The Legislature may, if it desires, apportion the State in any manner that it sees fit, consistent with the equal protection clause of the United States Constitution, either before or after the 1972 general elections.

The Court reserves the right to file a more detailed memorandum in support of its order at a later date.

Order of the United States District Court Denying a Motion for Amended Findings of Fact and Conclusions of Law, Entered December 21, 1971

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-71-Civil 151

RICHARD A. BEENS, et al.,

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota, et al.,

Defendants,

THE SIXTY-SEVENTH MINNESOTA STATE SENATE,

Intervenor,

ROLLIN H. CRAWFORD, et al.,

Intervenors.

ORDER

The Sixty-seventh Minnesota State Senate has moved this Court for an Order substantially changing our Findings of December 3, 1971, and our Order of November 15, 1971. In effect, the motion asks us to reconsider our decision to reduce the size of the Minnesota legislature. To the extent that it makes such a request, it is denied. For the reasons set forth in the Memorandum attached to our Order dated December 3, 1971, we feel it is desirable for the various plans for reapportionment which are to be submitted to be based on a thirty-five member Senate and a one hundred and five member House of Representatives.

In addition, Senate counsel have asked this Court to certify certain questions of law to the United States Supreme Court for their immediate consideration. We know of no procedure whereby a three judge court can certify questions to the Supreme Court. Counsel for the Senate have cited none. Therefore, this request is also denied.

GERALD W. HEANEY
Judge
United States Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

EARL R. LARSON
Judge
United States District Court

Minnesota Statutes 1969, §§ 2.021-2.712

LEGISLATIVE DISTRICTS

2.021 NUMBER OF MEMBERS. For each legislature, until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 135 members.

[*Ex1966 c 1 s 1*]

2.031 APPORTIONMENT. Subdivision 1. The representatives in the senate and house of representatives are apportioned throughout the state in 67 legislative districts.

Subd. 2. The term "county, town or township, city, village, borough, ward, precinct or election precinct" when used in a description of a district which is apportioned by this act means a geographical area established as such by law and as it existed on the date this act became effective.

[*Ex1966 c 1 s 2*]

2.041 FIRST DISTRICT. The first legislative district consists of the counties of Houston and Fillmore and that part of the county of Winona consisting of the towns of Warren, Wilson, Homer, Richmond, Hart, Wiscoy, Pleasant Hill, New Hartford, and Dresbach and the village of Dakota and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

1A. The county of Fillmore is entitled to elect one representative.

1B. That part of the first legislative district not included in paragraph 1A is entitled to elect one representative.

[*Ex1966 c 1 s 3*]

2.051 SECOND DISTRICT. The second legislative district consists of the county of Wabasha and that part of Winona county not included in the first legislative district and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

2A. That part of Winona county consisting of the city of Winona, the village of Goodview and the town of Winona is entitled to elect one representative.

2B. That part of the second legislative district not included in paragraph 2A is entitled to elect one representative.

[*Ex1966 c 1 s 4*]

2.061 THIRD DISTRICT. The third legislative district consists of the counties of Steele, Dodge, and that part of Olmsted county consisting of the towns of Farmington, Oronoco, New Haven, Kalmar, Salem, Rock Dell, High Forest, Pleasant Grove, Orion, Elmira, Dover and Quincy and the villages of Byron, Stewartville and Dover, and that part of the village of Chatfield in Olmsted county and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

3A. The county of Steele is entitled to elect one representative.

3B. That part of the third legislative district not included in paragraph 3A is entitled to elect one representative.

[*Ex1966 c 1 s 5*]

2.072 FOURTH DISTRICT. The fourth legislative district is composed of that part of Olmsted county consisting of the city of Rochester, the village of Eyota and the towns of Cascade, Haverhill, Viola, Eyota, Marion and Rochester and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 6*]

2.081 FIFTH DISTRICT. The fifth legislative district consists of the county of Mower and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

5A. The city of Austin, except the third precinct of the second ward, is entitled to elect one representative.

5B. That part of the fifth legislative district not included in paragraph 5A is entitled to elect one representative.

[*Ex1966 c 1 s 7*]

2.091 SIXTH DISTRICT. The sixth legislative district consists of Goodhue county and that part of Dakota county not included in the twelfth legislative district and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

6A. That part of the sixth legislative district in Dakota county and that part of Goodhue county consisting of the city of Cannon Falls and the towns of Stanton, Cannon Falls, Vasa and Welch is entitled to elect one representative.

6B. That part of the sixth legislative district not included in paragraph 6A is entitled to elect one representative.

[*Ex1966 c 1 s 8*]

2.101 SEVENTH DISTRICT. The seventh legislative district consists of the county of Rice and that part of Le Sueur county not included in the fourteenth legislative district and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

7A. That part of Rice county consisting of the towns of Northfield, Wheeling and Cannon City, the cities of Northfield and Faribault, the village of Nerstrand and that part of the village of Dennison in Rice county is entitled to elect one representative.

7B. That part of the seventh legislative district not included in paragraph 7A is entitled to elect one representative.

[*Ex1966 c 1 s 9*]

2.111 EIGHTH DISTRICT. The eighth legislative district consists of the county of Washington, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 10*]

2.121 NINTH DISTRICT. The ninth legislative district consists of Waseca county and Freeborn county and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

9A. That part of Freeborn county consisting of the towns of Newry, Moscow, Oakland, London, Shell Rock, Hayward, Riceland, and Albert Lea, the city of Albert Lea, and the villages of Hollandale, Hayward, Glenville and Myrtle is entitled to elect one representative.

9B. That part of the ninth legislative district not included in paragraph 9A is entitled to elect one representative.

[Ex1966 c 1 s 11]

2.131 TENTH DISTRICT. The tenth legislative district consists of the counties of Faribault and Martin, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

10A. The county of Faribault is entitled to elect one representative.

10B. The county of Martin is entitled to elect one representative.

[Ex1966 c 1 s 12]

2.141 ELEVENTH DISTRICT. The eleventh legislative district consists of the county of Blue Earth, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

11A. The city of Mankato, except the sixteenth precinct, is entitled to elect one representative.

11B. That part of Blue Earth county not included in paragraph 11A is entitled to elect one representative.

[Ex1966 c 1 s 13]

2.151 TWELFTH DISTRICT. The twelfth legislative district consists of that part of Dakota county consisting of the towns of Eagan, Lebanon, and Rosemount; the villages of Burnsville, Inver Grove Heights, Sunfish Lake, Mendota Heights, Mendota, Lilydale and Rosemount; and the cities of West St. Paul and South St. Paul and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

12A. That part of Dakota county consisting of the city of South St. Paul and the village of Inver Grove Heights is entitled to elect one representative.

12B. That part of the twelfth legislative district not included in paragraph 12A is entitled to elect one representative.

[*Ex1966 c 1 s 14*]

2.161 THIRTEENTH DISTRICT. The thirteenth legislative district consists of that part of Wright county not included in legislative district sixteen and that part of Hennepin county consisting of the towns of Hassan, Champlin, and Dayton, and the villages of Rogers, Champlin, Greenfield, Corcoran, Maple Grove, Osseo, Brooklyn Park, Independence, Maple Plain, Loretto, Medina, Minnetrista, St. Bonifacius, and those parts of the villages of Rockford, Dayton and Hanover lying in Hennepin county and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

13A. That part of the thirteenth legislative district lying in Hennepin county is entitled to elect one representative.

13B. That part of the thirteenth legislative district not included in paragraph 13A is entitled to elect one representative.

[*Ex1966 c 1 s 15*]

2.171 FOURTEENTH DISTRICT. The fourteenth legislative district consists of the counties of Carver, Scott, and that part of LeSueur county consisting of the towns of Tyrone, Derrynane, Lanesburgh, and Montgomery; the village of Heidelberg, and the cities of LeSueur, Montgomery, and that part of the city of New Prague in LeSueur county, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

14A. The county of Carver and that part of the county of Scott consisting of the towns of Jackson and Louisville and the city of Shakopee is entitled to elect one representative.

14B. That part of the fourteenth legislative district not included in paragraph 14A is entitled to elect one representative.

[*Ex1966 c 1 s 16*]

2.181 FIFTEENTH DISTRICT. The fifteenth legislative district consists of the counties of Nicollet, McLeod, and Sibley, and is entitled to elect one senator and three representatives..

The representative districts are divided as follows:

15A. The county of McLeod, except the towns of Penn and Round Grove, and the village of Stewart is entitled to elect one representatve.

15B. The county of Sibley, and that part of the county of McLeod consisting of the towns of Penn and Round Grove, and the village of Stewart, and that part of the county of Nicollet consisting of the towns of Lafayette, West Newton and Ridgley, and the village of Lafayette is entitled to elect one representative.

15C. That part of the county of Nicollet not included in paragraph 15B is entitled to elect one representative.

[*Ex1966 c 1 s 17*]

2.191 SIXTEENTH DISTRICT. The sixteenth legislative district consists of the counties of Renville, Meeker and that part of Wright county consisting of the towns of Southside, French Lake, Cokato and Stockholm, and the villages of Cokato and South Haven and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

16A. The county of Renville is entitled to elect one representative.

16B. That part of the sixteenth legislative district not included in paragraph 16A is entitled to elect one representative.

[*Ex1966 c 1 s 18*]

2.201 SEVENTEENTH DISTRICT. The seventeenth legislative district consists of the counties of Brown and Redwood, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

17A. The county of Redwood and that part of the county of Brown consisting of the towns of Eden and Prairieville and the villages of Cobden and Evan is entitled to elect one representative.

17B. That part of the county of Brown not included in paragraph 17A is entitled to elect one representative.

[*Ex1966 c 1 s 19*]

2.211 EIGHTEENTH DISTRICT. The eighteenth legislative district consists of the counties of Cottonwood, Jackson and Watonwan, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

18A. The county of Jackson, and that part of the county of Cottonwood consisting of the towns of Great Bend, Lake-

side and Mountain Lake, the city of Windom, and the villages of Bingham Lake and Mountain Lake is entitled to elect one representative.

18B. The county of Watonwan, and that part of the county of Cottonwood not included in paragraph 18A is entitled to elect one representative.

[*Ex1966 c 1 s 20*]

2.221 NINETEENTH DISTRICT. The nineteenth legislative district consists of the counties of Murray, Nobles, and Rock and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

19A. The county of Nobles is entitled to elect one representative.

19B. The counties of Rock and Murray are entitled to elect one representative.

[*Ex1966 c 1 s 21*]

2.231 TWENTIETH DISTRICT. The twentieth legislative district consists of the counties of Lincoln, Lyon, and Pipestone, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

20A. The counties of Pipestone and Lincoln are entitled to elect one representative.

20B. The county of Lyon is entitled to elect one representative.

[*Ex1966 c 1 s 22*]

2.241 TWENTY-FIRST DISTRICT. The twenty-first legislative district consists of the counties of Chisago and Isanti, and that part of the county of Anoka consisting of the towns of Columbus, Linwood, Ham Lake, Grow, Oak Grove, Burns, and Ramsey, and the villages of St. Francis, East Bethel,

Bethel, city of Anoka and that part of the city of Coon Rapids situated west of a line commencing at the north city limits and the center line of Hanson Boulevard, extending southerly on Hanson Boulevard and Hanson Boulevard extended to the main channel of the Mississippi River, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

21A. That part of the county of Anoka included in this section is entitled to elect one representative.

21B. The counties of Chisago and Isanti are entitled to elect one representative.

[Ex1966 c 1 s 23; 1967 c264 s 1]

2.251 **TWENTY-SECOND DISTRICT.** The twenty-second legislative district consists of the counties of Chippewa, Yellow Medicine and Lac qui Parle and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

22A. The county of Chippewa and that part of Lac qui Parle county consisting of the towns of Hantho, Lac qui Parle, Camp Release, Ten Mile Lake, Baxter, Cerro Gordo, and Lake Shore, the villages of Louisburg and Boyd, and that part of the city of Granite Falls in Yellow Medicine county is entitled to elect one representative.

22B. That part of the twenty-second legislative district not included in paragraph 22A is entitled to elect one representative.

[Ex1966 c 1 s 24]

2.261 **TWENTY-THIRD DISTRICT.** The twenty-third legislative district consists of the counties of Kandiyohi and Swift and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

23A. The county of Swift and that part of the county of Kandiyohi consisting of the towns of Norway Lake, Arctander, Mamre, Colfax, Lake Andrew, Dovre, Burbank and Roseville, and the villages of Regal and Sunberg is entitled to elect one representative.

23B. That part of the county of Kandiyohi not included in paragraph 23A is entitled to elect one representative.

[*Ex1966 c 1 s 25*]

2.271 TWENTY-FOURTH DISTRICT. The twenty-fourth legislative district consists of the counties of Big Stone, Grant, Pope, Traverse, and Stevens, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

24A. The counties of Pope and Stevens are entitled to elect one representative.

24B. The counties of Big Stone, Grant, and Traverse are entitled to elect one representative.

[*Ex1966 c 1 s 26*]

2.281 TWENTY-FIFTH DISTRICT. The twenty-fifth legislative district consists of the counties of Pine, Kanabec, Mille Lacs, and Sherburne, except the city of St. Cloud, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

25A. The counties of Pine and Kanabec are entitled to elect one representative.

25B. That part of the twenty-fifth legislative district not included in paragraph 25A is entitled to elect one representative.

[*Ex1966 c 1 s 27*]

2.291 TWENTY-SIXTH DISTRICT. The twenty-sixth legislative district consists of the county of Stearns except the city of St. Cloud, the towns of LeSauk and Brockway, the vil-

lage of St. Stephens and that part of the village of Sartell in the county of Stearns and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

26A. That part of the county of Stearns consisting of the towns of Eden Lake, Luxemburg, Maine Prairie, Fairhaven, Lynden, St. Augusta, Rockville, Wakefield, Munson, Farming, Collegeville, St. Joseph, St. Cloud, and St. Wendel, the villages of Kimball Prairie, Rockville, Cold Spring, Richmond, Roscoe, Pleasant Lake, St. Joseph, Waite Park, and that part of the village of Eden Valley in the county of Stearns is entitled to elect one representative.

26B. That part of the twenty-sixth legislative district not included in paragraph 26A is entitled to elect one representative.

[*Ex1966 c 1 s 28*]

2.301 TWENTY-SEVENTH DISTRICT. The twenty-seventh legislative district consists of the city of Bloomington in Hennepin county and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

27A. That part of the city of Bloomington consisting of precincts 4, 5, 7, 8, 10, and 11 is entitled to elect one representative.

27B. That part of the city of Bloomington consisting of precincts 1, 2, 3, 6, 9, 12, 13, and 14 is entitled to elect one representative.

[*Ex1966 c 1 s 29*]

2.311 TWENTY-EIGHTH DISTRICT. The twenty-eighth legislative district consists of that part of the county of Hennepin consisting of the village of Richfield and the eighth precinct of the village of Edina, the Fort Snelling Reservation and any part of the area included in the Minneapolis-St. Paul

International airport not a part of an incorporated municipality, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

28A. Precinct 8 of the village of Edina, and that part of the village of Richfield lying west of the following described line: Commencing at the northerly boundary of the village of Richfield at its intersection with the railway tracks of the Minneapolis, Northfield, and Southern railway, then southerly along the railway right of way to 70th Street, thence easterly along 70th Street to Blaisdell Avenue, thence southerly along Blaisdell Avenue extended and Blaisdell Avenue and Blaisdell Avenue extended to 78th Street, or Highway No. 494, the southerly boundary of the village of Richfield; and is entitled to elect one representative.

28B. That part of the 28th legislative district not included in paragraph 28A is entitled to elect one representative.

[*Ex1966 c 1 s 30*]

2.321 TWENTY-NINTH DISTRICT. The twenty-ninth legislative district consists of that part of the county of Hennepin consisting of the village of Eden Prairie, the village of Edina except precinct 8, the village of Morningside, that part of the village of Minnetonka consisting of precincts 4, 5, 6 and 7, any part of the village of Chanhassen in Hennepin county, and the city of Hopkins and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

29A. The village of Morningside and the village of Edina except precinct eight is entitled to elect one representative.

29B. That part of the twenty-ninth legislative district not included in paragraph 29A is entitled to elect one representative.

[*Ex1966 c 1 s 31*]

2.331 THIRTIETH DISTRICT. The thirtieth legislative district consists of that part of the county of Hennepin consisting of the city of St. Louis Park and that part of the city of Golden Valley south of Trunk Highway 55 and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

30A. That part of the village of Golden Valley south of Trunk Highway 55 and ward 1, and precincts 1, 2, 4 and 5 of ward 4 of the city of St. Louis Park is entitled to elect one representative.

30B. That part of the thirtieth legislative district not included in paragraph 30A is entitled to elect one representative.

[*Ex1966 c 1 s 32*]

2.341 THIRTY-FIRST DISTRICT. The thirty-first legislative district consists of that part of the county of Hennepin consisting of the cities of Robbinsdale and Crystal and that part of the village of Golden Valley lying north of Trunk Highway 55 and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

31A. The city of Crystal is entitled to elect one representative.

31B. That part of the thirty-first legislative district not included in paragraph 31A is entitled to elect one representative.

[*Ex1966 c 1 s 33*]

2.351 THIRTY-SECOND DISTRICT. The thirty-second legislative district consists of that part of the county of Hennepin consisting of the village of Brooklyn Center, that part of the county of Anoka consisting of the city of Columbia Heights, the village of Hilltop, and precinct 3 of ward 3 of the city of Fridley, and that part of the counties of Hennepin and

Ramsey consisting of the village of St. Anthony and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

32A. The village of Brooklyn Center is entitled to elect one representative.

32B. That part of the thirty-second legislative district not included in paragraph 32A is entitled to elect one representative.

[*Ex1966 c s 34*]

2.361 THIRTY-THIRD DISTRICT. The thirty-third legislative district consists of that part of the county of Hennepin consisting of the cities of Wayzata and Minnetonka Beach, the villages of Mound, Spring Park, Orono, Long Lake, Tonka Bay, Shorewood, Excelsior, Greenwood, Deephaven, Woodland, Plymouth, Medicine Lake, New Hope and that part of the village of Minnetonka consisting of precincts 1, 2, and 3 and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

33A. The villages of New Hope, Plymouth, Medicine Lake, that part of the village of Minnetonka consisting of precincts 1, 2, and 3 is entitled to elect one representative.

33B. That part of the thirty-third legislative district not included in paragraph 33A is entitled to elect one representative.

[*Ex1966 c 1 s 35*]

2.371 THIRTY-FOURTH DISTRICT. The thirty-fourth legislative district consists of that part of the city of Minneapolis consisting of precincts 11 through 14 of the second ward, precinct 14 of the ninth ward, precincts 1 through 16 of the twelfth ward, and precinct 12 of the eleventh ward and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 36*]

2.381 THIRTY-FIFTH DISTRICT. The thirty-fifth legislaitve district consists of that part of the city of Minneapolis consisting of precincts 8 through 16 of the eighth ward, precincts 10 through 12 of the ninth ward, and precincts 2 through 5, 7 through 11, and precincts 14, 15, and 16 of the eleventh ward, and is entitled to elect one senator and two representatives.

[Ex1966 c 1 s 37]

2.391 THIRTY-SIXTH DISTRICT. The thirty-sixth legislative district consists of that part of the city of Minneapolis consisting of precincts 7, 10 and 13 through 16 of the seventh ward, precincts 4 through 7 of the eighth ward, precincts 1 through 11 of the tenth ward, and precincts 1 and 2 of the thirteenth ward, and is entitled to elect one senator and two representatives.

[Ex1966 c 1 s 38]

2.401 THIRTY-SEVENTH DISTRICT. The thirty-seventh legislative district consists of that part of the city of Minneapolis consisting of precincts 12 through 15 of the tenth ward, precincts 1, 6 and 13 of the eleventh ward, and precincts 3 through 18 of the thirteenth ward, and is entitled to elect one senator and two representatives.

[Ex1966 c 1 s 39]

2.411 THIRTY-EIGHTH DISTRICT. The thirty-eighth legislative district consists of that part of the city of Minneapolis consisting of precincts 10 through 12 of the fifth ward, precincts 1, 2, 5, 6, 7, 16, and 18 of the sixth ward, precincts 1 through 6, 8, 9, 11, and 12 of the seventh ward, and precincts 1 through 3 of the eighth ward, and is entitled to elect one senator and two representatives.

[Ex1966 c 1 s 40]

2.421 THIRTY-NINTH DISTRICT. The thirty-ninth legislative district consists of that part of the city of Minneapolis consisting of precincts 1, 2, 3, 4, 5, 7, 8, 9, 11, 12 and 13 of the fourth ward, and precincts 1 through 8 of the fifth ward, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 41*]

2.431 FORTIETH DISTRICT. The fortieth legislative district consists of that part of the city of Minneapolis consisting of precincts 1 and 4 of the first ward, precincts 1 through 14 of the third ward, precincts 6 and 10 of the fourth ward, and precinct 9 of the fifth ward, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 42*]

2.441 FORTY-FIRST DISTRICT. The forty-first legislative district consists of that part of the city of Minneapolis consisting of precincts 2, 3, and 5 through 11 of the first ward, and precincts 1 through 9 of the second ward, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 43*]

2.451 FORTY-SECOND DISTRICT. The forty-second legislative district consists of that part of the city of Minneapolis consisting of precinct 10 of the second ward, precincts 3, 4, 8 through 15, 17, 19, and 20 of the sixth ward, and precincts 1 through 9 and 13 of the ninth ward, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 44*]

2.461 FORTY-THIRD DISTRICT. The forty-third legislative district consists of that part of the city of St. Paul described as follows: Commencing at the intersection of the east city limits and the center line of East Minnehaha Avenue, extending westerly along the center line of East Minnehaha Avenue to the center line of Earl Street, extending northerly

along the center line of Earl Street to the Northern Pacific Railway right of way, extending westerly and southwesterly along the Northern Pacific Railway right of way and the Northern Pacific Railway right of way extended, to the main channel of the Mississippi River, extending southwesterly along the main channel of the Mississippi River to the point of its intersection with the center line of Eagle Street extended, extending northwesterly along the center line of Eagle Street extended and Eagle Street to the center line of Kellogg Boulevard, extending northwesterly along the center line of Kellogg Boulevard to the center line of the Irvine Avenue, extending southwesterly along the center line of Irvine Avenue to the center line of Western Avenue, extending southerly along the center line of Western Avenue and Western Avenue extended to the main channel of the Mississippi River, extending southwesterly along the main channel of the Mississippi River to Annapolis Street extended, extending easterly along the center line of Annapolis Street extended and the south city limits, and the south city limits extended to the main channel of the Mississippi River, extending southerly along the main channel of the Mississippi River to the south Ramsey County line, extending easterly along the south Ramsey County line to the east city limits of the city of St. Paul, extending northerly along the east city limits to the point of beginning, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

43A. That portion of the forty-third legislative district situated west of a line commencing at the easterly extension of Annapolis Street and the main channel of the Mississippi River, and extending northerly and northwesterly along the main channel of the Mississippi River to the Northern Pacific

Railway right of way extended is entitled to elect one representative.

43B. That portion of the forty-third legislative district not included in paragraph 43A is entitled to elect one representative.

[*Ex1966 c 1 s 45*]

2.471 FORTY-FOURTH DISTRICT. The forty-fourth legislative district consists of that part of the city of St. Paul described as follows: Commencing at the intersection of the north city limits and the center line of Mississippi Street, extending southerly along the center line of Mississippi Street to the center line of East Minnehaha Avenue extended, extending easterly along the center line of East Minnehaha Avenue extended, and East Minnehaha Avenue to the Northern Pacific Railway right of way, extending northerly and easterly along the Northern Pacific Railway right of way to the center line of Earl Street, extending southerly along the center line of Earl Street to the center line of East Minnehaha Avenue, extending easterly along the center line of East Minnehaha Avenue to the city limits, extending northerly along the east city limits to the north city limits, extending westerly along the north city limits to the point of beginning, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

44A. That portion of the forty-fourth legislative district situated west of a line commencing at the intersection of the Northern Pacific Railway right of way and the center line of Earl Street, and extending northerly along the Northern Pacific Railway right of way to the center line of East Arlington Avenue, extending westerly along the center line of East Arlington Avenue to the center line of East Shore Drive, and extending northerly along the center line of East Shore Drive

to the north city limits is entitled to elect one representative.

44B. That portion of the forty-fourth legislative district not included in paragraph 44A is entitled to elect one representative.

[*Ex1966 c 1 s 46*]

2.481 **FORTY-FIFTH DISTRICT.** The forty-fifth legislative district consists of that portion of the city of St. Paul described as follows: commencing at the intersection of the north city limits and the center line of Mississippi Street, extending southerly along the center line of Mississippi Street to the center line of East Minnehaha Avenue extended, extending easterly along the center line of East Minnehaha Avenue extended and East Minnehaha Avenue to the Northern Pacific Railway right of way, extending southerly along the Northern Pacific Railway right of way and the Northern Pacific Railway right of way extended to the main channel of the Mississippi River, extending southwesterly along the main channel of the Mississippi River to the center line of Eagle Street extended, extending northwesterly along the center line of Eagle Street extended and Eagle Street to the center line of Kellogg Boulevard, extending northwesterly along the center line of Kellogg Boulevard to the center line of Irvine Avenue, extending southwesterly along the center line of Irvine Avenue to the center line of Western Avenue, extending northerly along the center line of Western Avenue to the center line of St. Anthony Avenue, extending westerly along the center line of St. Anthony Avenue to the center line of Mackubin Street, extending northerly along the center line of Mackubin Street to the center line of West Minnehaha Avenue, extending westerly along the center line of West Minnehaha Avenue to the center line of North Albert Street, extending northerly along the center line of North Albert Street to the center line of De-

Courcy Drive, extending easterly along the center line of DeCourcy Drive to the center line of Lexington Parkway, extending northerly along the center line of Lexington Parkway to the Northern Pacific Railway right of way, extending easterly along the Northern Pacific Railway right of way to the center line of Como Place, extending northerly along the center line of Como Place and Como Place extended to the center line of East Como Boulevard extending northerly along the center line of East Como Boulevard to the center line of North Victoria Street, extending northerly along the center line of North Victoria Street to the north city limits, extending easterly along the north city limits to the point of beginning, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

45A. That portion of the forty-fifth legislative district situated north and west of a line commencing at the intersection of the center lines of Mississippi Street and West Magnolia Avenue and extending westerly along the center line of West Magnolia Avenue to the center line of Rice Street, extending southerly along the center line of Rice Street to the center line of West Minnehaha Avenue extended, extending westerly along the center line of West Minnehaha Avenue extended and West Minnehaha Avenue to the center line of Mackubin Street is entitled to elect one representative.

45B. That portion of the forty-fifth legislative district not included in paragraph 45A is entitled to elect one representative.

[Ex1966 c 1 s 47]

2.491 FORTY-SIXTH DISTRICT. The forty-sixth legislative district consists of that part of the city of St. Paul described as follows: Commencing at the intersection of Inter-

state Highway 35E and the main channel of the Mississippi River and extending northerly along the center line of Interstate Highway 35E to the center line of Milton Street, extending northerly along the center line of Milton Street to the center line of Hague Avenue, extending westerly along the center line of Hague Avenue to the center line of North Albert Street, extending northerly along the center line of North Albert Street, North Albert Street extended, and North Albert Street to the center line of West Minnehaha Avenue, extending easterly along the center line of West Minnehaha Avenue to the center line of Mackubin Street, extending southerly along the center line of Mackubin Street to the center line of St. Anthony Avenue, extending easterly along the center line of St. Anthony Avenue to the center line of Western Avenue, extending southerly along the center line of Western Avenue and Western Avenue extended, to the main channel of the Mississippi River, extending southwesterly along the main channel of the Mississippi River to the point of beginning, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

46A. That portion of the forty-sixth legislative district situated south of a line commencing at the intersection of the center lines of Milton Street and Hague Avenue, extending northerly along the center line of Milton Street to the center line of Dayton Avenue, and extending easterly along the center line of Dayton Avenue to the center line of Western Avenue is entitled to elect one representative.

46B. That portion of the forty-sixth legislative district not included in paragraph 46A is entitled to elect one representative.

[*Ex1966 c 1 s 48*]

2.501 FORTY-SEVENTH DISTRICT. The forty-seventh legislative district consists of that part of the city of St. Paul described as follows: Commencing at the intersection of the main channel of the Mississippi River and the center line of Interstate Highway 35E and extending northerly along the center line of Interstate Highway 35E to the center line of Milton Street, extending northerly along the center line of Milton Street to the center line of Hague Avenue, extending westerly along the center line of Hague Avenue to the center line of Snelling Avenue, extending southerly along the center line of Snelling Avenue to the center line of St. Clair Avenue, extending westerly along the center line of St. Clair Avenue and St. Clair Avenue extended to the main channel of the Mississippi River, extending southerly and easterly along the main channel of the Mississippi River to the point of beginning, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

47A. That portion of the forty-seventh legislative district situated west of a line commencing at the intersection of the center lines of Snelling Avenue and St. Clair Avenue and extending southerly along the center line of Snelling Avenue to the center line of Montreal Avenue, extending westerly along the center line of Montreal Avenue to the center line of Davern Street, and extending southerly along the center line of Davern Street and Davern Street extended to the main channel of the Mississippi River is entitled to elect one representative.

47B. That portion of the forty-seventh legislative district not included in paragraph 47A is entitled to elect one representative.

[Ex1966 c 1 s 49]

2.511 FORTY-EIGHTH DISTRICT. The forty-eighth legislative district consists of that part of the city of St. Paul described as follows: Commencing at the intersection of the main channel of the Mississippi River and St. Clair Avenue extended, extending easterly along the center line of St. Clair Avenue extended and St. Clair Avenue to the center line of Snelling Avenue, extending northerly along the center line of Snelling Avenue to the center line of Hague Avenue, extending easterly along the center line of Hague Avenue to the center line of North Albert Street, extending northerly along the center line of North Albert Street, North Albert Street extended and North Albert Street to the center line of DeCourcy Drive, extending easterly along the center line of DeCourcy Drive to the center line of Lexington Parkway, extending northerly along the center line of Lexington Parkway to the Northern Pacific Railway right of way, extending easterly along the Northern Pacific Railway right of way to the center line of Como Place, extending northerly along the center line of Como Place and Como Place extended to the center line of East Como Boulevard, extending northerly along the center line of East Como Boulevard to the center line of North Victoria Street, extending northerly along the center line of North Victoria Street to the north city limits, extending westerly along the north city limits to the west city limits, extending southerly along the west city limits to the point of beginning and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

48A. That portion of the forty-eighth legislative district situated north of a line commencing at the west city limits and the center line of University Avenue, and extending southeasterly and easterly to the center line of North Albert Street is entitled to elect one representative.

48B. That portion of the forty-eighth legislative district not included in paragraph 48A is entitled to elect one representative.

[*Ex1966 c 1 s 50*]

2.521 FORTY-NINTH DISTRICT. The forty-ninth legislative district consists of that part of the county of Ramsey consisting of the villages of Falcon Heights, Lauderdale, Roseville, Arden Hills, New Brighton, and Shoreview, and any unorganized territory surrounded by Shoreview, Arden Hills, New Brighton, and Mounds View, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

49A. The villages of Arden Hills, New Brighton, and Shoreview, any unorganized territory surrounded by Shoreview, Arden Hills, New Brighton, and Mounds View, and that part of the village of Roseville lying west of the center line of Lexington Avenue and north of the center line of State Highway 36 is entitled to elect one representative.

49B. That part of the forty-ninth legislative district not included in paragraph 49A is entitled to elect one representative.

[*Ex1966 c 1 s 51*]

2.531 FIFTIETH DISTRICT. The fiftieth legislative district consists of that part of the county of Ramsey consisting of the villages of North St. Paul, Maplewood, Gem Lake, Little Canada, North Oaks, and Vadnais Heights, the city of White Bear Lake and the town of White Bear, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

50A. The villages of North St. Paul and Maplewood is entitled to elect one representative.

50B. That part of the fiftieth legislative district not included in paragraph 50A is entitled to elect one representative.

[*Ex1966 c 1 s 52*]

2.541 FIFTY-FIRST DISTRICT. The fifty-first legislative district consists of the county of Benton, that part of the city of St. Cloud located in Sherburne county, and that part of Stearns county consisting of the city of St. Cloud, the towns of Le Sauk and Brockway, the village of St. Stephens, and that part of the village of Sartell located in Stearns county, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

51A. That part of the city of St. Cloud located in Stearns county is entitled to elect one representative.

51B. That part of the fifty-first legislative district not included in paragraph 51A is entitled to elect one representative.

[Ex1966 c 1 s 53]

2.551 FIFTY-SECOND DISTRICT. The fifty-second legislative district consists of the counties of Aitkin and Carlton and that part of Crow Wing county consisting of the towns of Little Pine, Ross Lake, Dean Lake, Rabbit Lake, Deerwood, Bay Lake, Nokay Lake, Irondale, Wolford, Perry Lake and Fairfield, and the villages of Emily, Deerwood, Cuyuna, Riverton, Ironton, Trommald, and Crosby and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

52A. The county of Aitkin, that part of Crow Wing county included in the district and that part of Carlton county consisting of the towns of Beseman, Lakeview, Automba, Split Rock, Kalevala, Silver, Skelton and Atkinson and the unorganized territory north of the towns of Automba, Kalevala, Skelton and Aitkinson and the villages of Kettle River, Cromwell, and Wright is entitled to elect one representative.

52B. That part of the fifty-second legislative district not included in paragraph 52A is entitled to elect one representative.

[*Ex1966 c 1 s 54*]

2.561 FIFTY-THIRD DISTRICT. The fifty-third legislative district consists of Morrison county and that part of Crow Wing county not included in the fifty-second legislative district and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

53A. The county of Morrison is entitled to elect one representative.

53B. That part of the fifty-third legislative district not included in paragraph 53A is entitled to elect one representative.

[*Ex1966 c 1 s 55*]

2.571 FIFTY-FOURTH DISTRICT. The fifty-fourth legislative district consists of the counties of Douglas, Todd, and Wadena, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

54A. The county of Douglas and that part of Todd county consisting of the towns of Wykeham, Burleen, Leslie, Gordon, West Union, Kandota, Little Sauk, Reynolds, Iona, Eagle Valley, and Birchdale, and the villages of West Union, Clarissa, Eagle Bend, and that part of the village of Osakis in Todd county is entitled to elect one representative.

54B. That part of the fifty-fourth legislative district not included in paragraph 54A is entitled to elect one representative.

[*Ex1966 c 1 s 56*]

2.581 FIFTY-FIFTH DISTRICT. The fifty-fifth legislative district consists of the county of Otter Tail, and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 57*]

2.591 FIFTY-SIXTH DISTRICT. The fifty-sixth legislative district consists of the counties of Clay and Wilkin, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

56A. That part of the county of Clay consisting of the towns of Oakport and Moorhead, the city of Moorhead, and the village of Dilworth is entitled to elect one representative.

56B. The county of Wilkin, and that part of the county of Clay not included in paragraph 56A is entitled to elect one representative.

[*Ex1966 c 1 s 58*]

2.601 FIFTY-SEVENTH DISTRICT. The fifty-seventh legislative district consists of those parts of the counties of Anoka and Ramsey consisting of the city of Fridley except precinct 3 of ward 3, the villages of Spring Lake Park, Mounds View, Lino Lakes, Centerville, Circle Pines, Lexington and the city of Blaine, and that part of the city of Coon Rapids lying east of a line commencing at the north city limits and the center line of Hanson Boulevard, extending southerly along Hanson Boulevard and Hanson Boulevard extended to the main channel of the Mississippi River and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

57A. The city of Fridley except precinct 3 of ward 3, and the villages of Spring Lake Park and Mounds View, and that part of the city of Blaine that is in Ramsey county, is entitled to elect one representative.

57B. That part of the fifty-seventh legislative district not included in paragraph 57A is entitled to elect one representative.

[*Ex1966 c 1 s 59; 1967 c264 s 2*]

2.611 FIFTY-EIGHTH DISTRICT. The fifty-eighth legislative district consists of the counties of Cass and Itasca, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

58A. The county of Cass and all that part of the county of Itasca described as follows: All that part west of the east town line of the town of Spang and the west town line of the towns of Harris, Grand Rapids, Arbo and Wabana, north of the north town lines of the towns of Wabana, Lawrence and Nashwauk is entitled to elect one representative.

58B. That part of the county of Itasca not included in paragraph 58A is entitled to elect one representative.

[*Ex1966 c 1 s 60*]

2.621 FIFTY-NINTH DISTRICT. The fifty-ninth legislative district consists of that part of the county of St. Louis consisting of precincts 47 through 75 of the city of Duluth, the towns of Cotton, Northland, New Independence, Grand Lake, Industrial, Herman, Midway, Solway, Brevator, Stoney Brook, Culver, Alborn, Payne, Meadowlands, Ness, and Arrowhead, and the villages of Brookston, Meadowlands and Proctor, and the unorganized territory known as Township 53, Range 16 is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

59A. That part of the city of Duluth consisting of precincts 47 through 65 is entitled to elect one representative.

59B. That part of the city of Duluth consisting of precincts 66 through 75 and the remainder of the county of St.

Louis included in this section is entitled to elect one representative.

[*Ex1966 c 1 s 61*]

2.631 **SIXTIETH DISTRICT.** The sixtieth legislative district consists of that part of the county of St. Louis consisting of the towns of Fredenberg, Canosia, Rice Lake, and Gnesen; the unorganized territory known as Township 53, Range 15, and Township 54 in Ranges 14 and 15, and that part of the city of Duluth consisting of precinct 9 and precincts 14 through 46 and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 62*]

2.641 **SIXTY-FIRST DISTRICT.** The sixty-first legislative district consists of the counties of Cook and Lake and that part of the county of St. Louis consisting of the towns of Fairbanks, Ault, Alden, Normanna, Lakewood, and Duluth; the unorganized territory known as Township 54, Range 13, and precincts 1 through 8 and 10 through 13 of the city of Duluth and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

61A. The counties of Cook and Lake and that part of the county of St. Louis outside of the city of Duluth included in this legislative district, and that part of the city of Duluth consisting of precincts 6 and 7 is entitled to elect one representative.

61B. That part of the city of Duluth consisting of precincts 1 through 5, 8, and 10 through 13 is entitled to elect one representative.

[*Ex1966 c 1 s 63*]

2.651 SIXTY-SECOND DISTRICT. The sixty-second legislative district consists of that portion of the county of St. Louis described as follows: Commencing at the intersection of the north county line and the east county line, extending southerly on the east county line to the northeast corner of the town of Fairbanks, extending westerly on the north town line of the town of Fairbanks to the west town line of the town of Fairbanks, extending southerly on the west town lines of the towns of Fairbanks and Ault to the southwest corner of the town of Ault, extending westerly across the unorganized territory from the southwest corner of the town of Ault to the southeast corner of the town of Ellsburg, extending westerly on the south town line of the town of Ellsburg to the west town line of the town of Ellsburg, extending northerly along the west town line of the town of Ellsburg, and the east town lines of McDavitt, Clinton and Nicholls, and the west town lines of the towns of Wouri and Sandy, and the east town lines of the towns of Angora, Owens, and Beatty, to the south town line of the town of Portage, extending easterly on the south town line of the town of Portage to the east town line of the town of Portage, extending northerly on the east town line of the town of Portage and the east town line of the town of Portage extended to the north county line of the county of St. Louis, extending easterly on the north county line to the point of beginning, and including the city of Eveleth and the village of Leonidas and is entitled to elect one senator and two representatives.

[Ex1966 c 1 s 64]

2.661 SIXTY-THIRD DISTRICT. The sixty-third legislative district consists of that part of the county of St. Louis situated west and north of the following described line: Commencing at the south county line of the county of St. Louis

and the southeastern corner of the town of Fine Lakes, extending northerly along the east town lines of the towns of Fine Lakes, Floodwood, Van Buren and Elmer to the south town line of Toivola, extending easterly along the south town lines of Toivola and Kelsey to the west town line of the town of Cotton, extending northerly along the west town line of the towns of Cotton and Ellsburg, and the east town lines of McDavitt, Clinton and Nicholls, and the west town lines of the towns of Wouri and Sandy, and the east town lines of the towns of Angora, Owens, and Beatty, to the south town line of the town of Portage, extending easterly on the south town line of the town of Portage to the east town line of the town of Portage, extending northerly on the east town line of the town of Portage and the east town line of the town of Portage extended to the north county line of the county of St. Louis and excluding the city of Eveleth and the village of Leonidas and is entitled to elect one senator and two representatives.

[*Ex1966 c 1 s 65*]

2.671 SIXTY-FOURTH DISTRICT. The sixty-fourth legislative district consists of the counties of Lake of the Woods, Koochiching, and Beltrami, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

64A. The county of Beltrami except the towns of Lee, Hamre, Steenerson, Minnie, Spruce Grove, and Benville and the unorganized territory in Beltrami county lying north of the towns described in this paragraph 64A is entitled to elect one representative.

64B. That part of the sixty-fourth legislative district not included in paragraph 64A is entitled to elect one representative.

[*Ex1966 c 1 s 66*]

2.681 SIXTY-FIFTH DISTRICT. The sixty-fifth legislative district consists of the counties of Becker, Hubbard, Mahnomen and Clearwater, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

65A. The county of Becker is entitled to elect one representative.

65B. The counties of Hubbard, Mahnomen and Clearwater is entitled to elect one representative.

[*Ex1966 c 1 s 67*]

2.691 SIXTY-SIXTH DISTRICT. The sixty-sixth legislative district consists of the counties of Norman, Polk, and Red Lake, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

66A. The county of Norman and that part of the county of Polk consisting of the towns of Johnson, Chester, Gully, Tynsid, Roome, Andover, Fairfax, Kertsonville, Tilden, Grove Park, Badger, Lessor, Hill River, Eden, Vineland, Hammond, Russia, Onstad, Godfrey, Woodside, Knute, King, Brandsvold, Queen, Hubbard, Scandia, Reis, Liberty, Garfield, Garden, Winger, Sletten, Rosebud, and Columbia, and the villages of Trail, Gully, Mentor, Climax, Erskine, McIntosh, Nielsville, Beltrami, Fertile, Winger, Fosston, and Lengby, is entitled to elect one representative.

66B. The county of Red Lake and that part of the county of Polk not included in paragraph 66A is entitled to elect one representative.

[*Ex1966 c 1 s 68*]

2.701 SIXTY-SEVENTH DISTRICT. The sixty-seventh legislative district consists of the counties of Pennington, Marshall, Kittson and Roseau, and is entitled to elect one senator and two representatives.

The representative districts are divided as follows:

67A. The county of Kittson and that part of the county of Roseau, consisting of the towns of Blooming Valley, Soler, Barto, Polonia, Dewey, Hereim, Deer, Lind, and the villages of Strathcona and Greenbush, and the unorganized territory north and west of the town of Soler, and that part of the county of Marshall not included in paragraph 67B is entitled to elect one representative.

67B. The county of Pennington, that part of the county of Roseau not included in paragraph 67A, and that part of the county of Marshall, consisting of the towns of Thief Lake, Whiteford, Grand Plain, Moylan, Eckvoll, Rollis, Moose River, Linsell, Veldt, Valley, and Espelie, and the village of Grygla, and the unorganized territory north of the town of Grand Plain is entitled to elect one representative.

[*Ex1966 c.1 s 69*]

2.711 **OMITTED OR DUPLICATED TERRITORY.** Subdivision 1. If there is any territory within the boundaries of this state which is not named in this act but (1) which lies within the boundaries of a representative district or (2) which lies between the boundaries of two or more representative districts, for the purposes of this act the territory referred to in clause (1) is a part of the representative district within which it lies, but the territory referred to in clause (2) is a part of the contiguous representative district having the smallest population.

Subd. 2. If there is any territory within the boundaries of this state which lies within the boundaries of two or more representative districts, such territory is for the purposes of this act a part of the district which has the smallest population.

Subd. 3. Any territory which becomes a part of a representative district pursuant to subdivisions 1 and 2 is a part of the legislative district of which such representative district is a part.

[Ex1966 c 1 s 70]

2.712 EFFECTIVE DATE. This act shall apply to members of the legislature elected for any regular session of such legislature occurring after the final enactment of this act.

[Ex1966 c 1 s 72]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1024

SIXTY-SEVENTH MINNESOTA STATE SENATE,
Appellant-Intervenor,

vs.

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN,
Appellees,

ARLEN ERDAHL, GEORGE B. HICKEY, CHARLES LeFEBVRE, JOSEPH W. NOTERMAN, and WILLIAM J. SCHNEIDER,
Appellees,

ROLLIN H. CRAWFORD, JAMES M. KING, and ROBERT C. VOSS,
Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COUET FOR THE DISTRICT OF MINNESOTA

MOTION OF APPELLEES TO DISMISS APPEAL OR AFFIRM PURSUANT TO SUPREME COURT RULE 16

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1024

SIXTY SEVENTH MINNESOTA STATE SENATE,

Appellant-Intervenor,

vs.

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN,

Appellees,

ARLEN ERDAHL, GEORGE B. HICKEY, CHARLES LeFEBVRE, JOSEPH W. NOTERMAN, and WILLIAM J. SCHNEIDER,

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Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

MOTION OF APPELLEES TO DISMISS APPEAL OR AFFIRM PURSUANT TO SUPREME COURT RULE 16

MOTION

Plaintiff-appellees, Richard A. Beens, Phillip Krass, and Lawrence E. Meuwissen, hereby respectfully move this Court pursuant to Rule 16, United States Supreme Court Rules, for an Order dismissing the within appeal or, in the alternative, affirming summarily the Order of the United States District Court for the District of Minnesota, dated November 15, 1971, here appealed from. Plaintiff-appellees submit the attached Memorandum Brief in support of this motion.

COUNTER STATEMENT OF THE CASE

Plaintiff-appellees ("appellees"), residents and qualified voters of the State of Minnesota, residing in grossly malapportioned legislative districts, commenced this action in the United States District Court for the District of Minnesota on April 9, 1971. The jurisdiction of the Federal Court was founded upon 42 U.S.C. §§1983 and 1988 and 28 U.S.C. §§1343 (3) and 1343 (4).

The Complaint (A-2)* alleged the unconstitutionality of Minnesota Statutes, 1969, §§2.031 through 2.712, requested the convening of a Three-Judge Federal court pursuant to 28 U.S.C. §§2281 and 2284, and prayed for the following relief: (1) a declaratory judgment pursuant to 28 U.S.C. §2201 that Minnesota Statutes, 1969, §2.031 through 2.712 are invalid and void as being in violation of the Fourteenth Amendment to the United States Constitution; (2) an injunction pursuant to 28 U.S.C. §2202 restraining the defendant Secretary of State, and the defendant County Auditors, from conducting any future elections for members of the Minnesota Legislature from districts established by Minnesota Statutes,

*All references are to the Appendix attached hereto.

1969, §§2.031 through 2.712 until such time as the legislature established constitutionally valid districts; and (3) that the District Court, in the absence of the enactment by the Minnesota Legislature of a constitutionally valid plan of reapportionment, make a determination of a proper apportionment system for the State of Minnesota.

On or about June 25, 1971, the Chief Judge of the Eighth Circuit Court of Appeals designated the Three-Judge Court to hear and decide the case. Shortly thereafter, the District Court fixed a briefing schedule for arguments on the merits of the complaint, which schedule was to conclude on October 16, 1971.

By order dated October 14, 1971, appellants and appellees, Crawford, King and Voss were permitted, over the objection of appellees, to intervene in the action as additional defendants pursuant to Rule 24 (b), Federal Rules of Civil Procedure. That Order was based in part upon the representation by appellant's counsel that the proposed intervention would not delay the ultimate resolution of the action. (A-16).

The case came on for hearing on its merits on November 5, 1971. Thereafter, on November 15, 1971, the District Court made and entered its Order, the remedial part of which provides:

> "Having made the above findings of fact and law, the Court hereby:
>
> DECLARES: Minnesota Statutes 1969, §2.021 through 2.712 to be in violation of the Constitution of the United States.
>
> ORDERS: the defendants herein, including Arlen Erdahl, Secretary of State of the State of Minnesota and all County Auditors of the State of Minnesota, enjoined from holding or conducting any future elections under the present Apportionment Statutes.

ORDERS: the appointment of Professor Adams C. Breckenridge of Lincoln, Nebraska and Joseph T. Dixon, Jr. of Minneapolis, Minnesota as Special Masters to aid the Court in adopting a new plan of apportionment.

ORDERS: the adoption of the following schedule for proceeding with this matter:

November 12, 1971 — the final day for the parties and amici curiae to submit to the Court suggested criteria to be used by the Court in adopting a new plan of apportionment; the Court will thereafter announce the criteria it will utilize in reapportioning the State on the earliest possible date;

December 7, 1971 — the final day for the parties and amici curiae to submit to the Court proposals for reapportioning the State, such proposals to be consistent with the criteria previously announced by the Court;

December 21, 1971 — the final day for the parties and amici curiae to submit to the Court comments concerning the reapportionment proposals of the other parties and amici curiae; six copies of all suggested criteria, plans of reapportionment and comments with respect to other reapportionment proposals shall be provided to the Court and copies of each shall be served on each of the other parties and amici curiae.

Pursuant to said Order, each of the parties submitted proposed criteria for judicially ordered reapportionment plans and their objections to the criteria of others. Amici curiae Perpich (Lieutenant Governor) and Fena[1] submitted a pro-

[1] Rudy Perpich (Lieutenant Governor) and Representative Jack Fena were permitted to appear amicus curiae by order of the District Court dated November 26, 1971 (A-22).

posal to significantly reduce the size of the Minnesota Senate and House of Representatives. On November 26, 1971, the District Court issued an order adopting its criteria for reapportionment proposals to be made by the parties, suggesting that there might be some merit in the proposal of amici curiae Perpich and Fena to reduce the size of the Legislature, and permitting the parties and amici curiae to submit briefs on the issue. The District Court stated:

> "Parties, intervenors and amici desiring to submit briefs, shall file (6) six copies with the Clerk of Court in accordance with the time schedule outlined above. The briefs should be addressed to the following questions: (1) Is it within this Court's discretion to significantly reduce the size of the Senate and the House in this proceeding? (2) If the Court has discretion to take such action, should it exercise its discretion? (3) If the Court determines that a reduction in the size of the legislature is desirable, to what size should it reduce the Senate and House?

Argument on these issues was held on December 2, 1971. On December 3, 1971 the Court filed an order indicating its intention to apportion the Minnesota Legislature into 35 equally populated Senatorial Districts and 105 equally populated House Districts.[2]

Not until its final order and judgment of January 25, 1971, did the District Court adopt a plan calling for a reduced size Senate and House of Representatives.

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[2] Contrary to appellant's assertion (Jurisdictional Statement, p. 5) these appellees did not contest the jurisdiction of the District Court to reduce the number of legislative districts. They merely opposed the exercise of that jurisdiction in this proceeding.

I

Appellant Lacks Authority and Standing to Prosecute this Appeal

Appellant Sixty Seventh Minnesota State Senate is an intervenor in the instant case by virtue of an order of the District Court dated October 12, 1971 (A-12) permitting it to intervene. The basis of that order was a Resolution adopted by the Minnesota State Senate, as Senate Resolution 3, on July 31, 1971. (A-34). Armed with that Resolution, appellant moved to intervene in the action some six months after its commencement and one month prior to the hearing on the merits of the case. At the hearing on the motion to intervene, appellant's counsel represented to the District Court that appellant would do nothing to delay the speedy resolution of the action. Based on that representation and on Senate Resolution 3, and over the objection of appellees, the petition to intervene was granted.

Senate Resolution 3 is broad in its terms. Nevertheless, it does not authorize Senate Counsel to prosecute the instant appeal.[3] By its terms, it directs the Office of Senate Counsel "to take such steps as may be necessary to represent the interests and will of this body to the extent deemed necessary in both state and federal court actions involving the prescription of the bounds of senatorial and representative districts, the apportionment of senators and representatives among those districts, and the orderly process of elections therefrom . . ."

Nowhere in the Resolution is there any expression of legis-

[3] Senate Resolution 3 was adopted on July 31, 1971 by a vote of 56 to 0. When the purpose for which it had been proposed was realized, a motion for reconsideration was made. The motion for reconsideration failed by a vote of 33 to 31, along strict political lines, October 12, 1971. (A-37)

lative policy with respect to the number of representative or senatorial districts. Similarly, nowhere in the Resolution is the Office of Senate Counsel authorized to take an appeal to the United States Supreme Court. Furthermore, the concern of the Senate, as expressed in Senate Resolution 3, covers only the prescription of the bounds of Senate and Representative districts and the apportionment of senators and representatives among those districts. There is no expressed concern with the size of the legislature. Simply put, the Sixty-Seventh Minnesota Senate, as a body, has not authorized the Office of Senate Counsel to take the instant appeal.

Minnesota Statutes 1971, §481.09 provides:

> "A Court, upon motion and hearing, and when reasonable grounds are shown, may require any attorney to prove his authority to appear, and, until such proof is made, may stay all proceedings by him on behalf of the party he assumes to represent. At any stage of the proceedings the court may relieve a party from the consequences of the unauthorized acts of an attorney, and, upon motion, may summarily compel such attorney to repair any injury resulting therefrom."

Following the filing of the Notice of Appeal in the case at bar, it became apparent that the Office of Senate Counsel speaks only for certain members of the Senate, and not for that body as a whole. At least one member of the Senate stated even before the District Court had ruled upon the Motion to Intervene that the Senate Counsel did not speak for him. See Affidavit of State Senator John Chenoweth (A-38). Subsequent to the appeal, several other Senators have taken the same position. See Affidavits of State Senators, Gearty, et al. (A-39 et seq.).

In addition, certain members of the Minnesota Senate have petitioned the District Court (following the entry of the final judgment on January 25, 1972) for permission to intervene. These Senators (J. A. Josefson, Lew W. Larson, Mel Hansen, C. J. Benson, Earl W. Renneke and John L. Olson) contend that they are not adequately represented by the Office of Senate Counsel. The Order of the District Court dated February 9, 1972, denying their motion to intervene has now been appealed to the United States Circuit Court of Appeals for the Eighth Circuit and has been docketed therein.

For all of the foregoing reasons, appellees contend that a majority of the members of the Minnesota State Senate do not favor the continuation of the instant appeal. It should therefore be dismissed. At a minimum, the Office of Senate Counsel should be required to show the authority by which it continues to prosecute the instant appeal. *McLean v. Burkinshaw*, 107 F. 2d 665 (D.D.C. 1939).[4]

Appellees also contend that the Sixty-Seventh Minnesota Senate is not a legal entity or a judicial person for purposes of intervention or appeal. Article IV, Section 1 of the Minnesota Constitution provides in part:

> "The legislature shall consist of the Senate and House of Representatives."

By this provision the Senate is only part of the Legislature. If any legislative body possesses the requisite authority to appear in this Court it is the Legislature as a whole, and not

---

[4] Appellees note that financing of the instant appeal is being done in violation of the Minnesota State Constitution. Article III, Section 12 thereof, in part provides:

> "No money shall be appropriated except by bill."

Senate Resolution 3 attempts to finance Senate participation in the instant case by Resolution in direct violation of this provision. For this Court to permit the appeal to proceed would be to acquiesce in that violation.

merely a part of it. That a Senate alone is not a legally cognizable entity in reapportionment is shown by Article IV, Section 13 of the Minnesota Constitution which provides in part:

> "The Legislature shall have the power to apportion anew senators, and representatives among the several districts according to the provisions of Section Second of this article."

The Senate does not apportion itself. Only the Legislature, as a whole, has the standing and authority to prosecute the instant appeal. Hence the appeal should be dismissed for lack of authority and standing to maintain it.

II

This Court Does Not Have the Jurisdiction of the Appeal, Pursuant to 28 U.S.C. §1253

The appeal in the case at bar is from a preliminary order of the United States District Court for the District of Minnesota dated November 15, 1971, declaring invalid the Minnesota legislative apportionment statutes, Minnesota Statutes, 1969, §§2.021 through 2.712 as being in violation of the Constitution of the United States. The basis for that declaration was a finding by the District Court that the legislative apportionment statutes failed to meet the Federal Constitution's Equal Protection standards as interpreted by this Court in *Swann v. Adams*, 385 U.S. 440 (1967); *Davis v. Mann*, 377 U.S. 678 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); and *Whitcomb v. Chavis*, 403 U.S. 124 (1971).

Pursuant to its declaration that Minnesota Statutes, 1969, §§2.021 through 2.712 are unconstitutional and invalid, the

District Court ordered that the defendants, including the Secretary of State and all County Auditors were "enjoined from holding and conducting any further elections under the present apportionment statutes." Finally, the Court ordered the appointment of two Special Masters to aid the Court in formulating a new plan of apportionment and adopted a schedule for submission by the parties and others of proposed criteria for reapportionment and proposed plans of apportionment. The District Court did no more. (A-19).

The District Court did not enjoin the application of Minnesota Statutes 1969, §2.031 [5] as is contended by the appellant in its Jurisdictional Statement (pp. 3-4). A careful reading of the November 15, 1971 order of the District Court shows that it did declare §2.031 invalid, but enjoined future use of the apportionment statutes (§§2.041 through 2.712) only.

28 U.S.C. §1253, provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

In a series of recent cases, this Court has reviewed the history and purpose of that direct appeal statute and has concluded that the only direct appeals from interlocutory orders that this Court has power to hear under 28 U.S.C. §1253 are those granting or denying preliminary injunctions. *Goldstein v. Cox*, 396 U.S. 471 (1970).

Where no injunction of any kind is granted or denied, a direct appeal to this Court will not lie. *Rockefeller v. Catholic*

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[5] "Subd. 1. The representatives in the senate and house . . . are apportioned . . . in 67 legislative districts."

Medical Center, 397 U.S. 820 (1970); *Mitchell v. Donovan*, 398 U.S. 427 (1970); *Gunn v. University Committee*, 399 U.S. 383 (1970).

Under the Rules of this Court, only questions set forth in the jurisdictional statement, or fairly comprised therein, will be considered on the appeal, Rule 15 (c), Supreme Court Rules. The only question presented by appellant in its Jurisdictional Statement (p. 4) is whether the District Court erred in enjoining the use of Minnesota Statutes, 1969, §2.031.[6] The order of November 15, 1971 shows no injunction against the use of Section 2.031. It shows only a declaration of invalidity of Section 2.031. The injunctive relief granted by the order runs only against the use of those sections of the statutes actually apportioning the various districts. (A-19).

Under the decisions of the Court in *Gunn v. University Committee, supra; Mitchell v. Donovan, supra; Rockefeller v. Catholic Medical Center, supra;* and *Goldstein v. Cox, supra*, the instant appeal should be dismissed.

As noted in *Gunn v. University Committee, supra:*

> "What we deal with here is no mere technicality. In *Goldstein v. Cox, supra*, we pointed out that: 'This Court has more than once stated that jurisdiction under the Three-Judge Court Act is to be narrowly construed since any loose construction of the requirement of [The Act] would defeat the purpose of Congress . . . to keep within narrow confines our appellate docket.' *Phillips v. United States* [312 U.S. 246], at 250. See *Stainback v. Mo Hock Ke Lok Po*, 366 U.S. 368, 375 (1949); *Moore v. Fidelity Deposit Co.*, 272 U.S. 317, 321 (1926); 396 U.S. at 478. But there are underlying policy considerations in this case more fundamental than mere economy of judicial resources.

[6] The Notice of Appeal states that it is "from the injunction issued . . . on November 15, 1971." (A-1).

> One of the basic reasons for the limit in 28 U.S.C. §1253 upon our power of review is that until a district court issues an injunction, or enters an order denying one, it is simply not possible to know with any certainty what the court has decided—a state of affairs that is conspicuously evident here . . ."

The Court went on to discuss the difficulties that can arise in determining what the court below has done when an appeal is taken prior to judgment. Similarly in the case at bar, there is nothing in the order of November 15, 1971 relative to a reduction in the size of the Minnesota Legislature about which appellant can complain on direct appeal. In short, that order is only a declaratory judgment insofar as it affects Minnesota Statutes, 1969, §2.031. The above cited cases make it clear that a declaratory judgment alone does not create a right of direct appeal to this Court.

Appellant, in its Jurisdictional Statement, does not contend that the old legislative districts were not unconstitutional. Appellants attempt to sustain the jurisdiction of this Court by the fiction that it is appealing from the order allegedly enjoining the operation of Minnesota Statutes 1969, §2.031. Appellant thus presents the claimed question of the constitutionality of that section. Yet a fair reading of the record as well as appellant's Jurisdictional Statement (See e.g. pp. 16-19) shows that the real question at issue is the authority of the District Court to order the adoption of a plan of legislative apportionment which plan includes, *inter alia*, a significant reduction in the number of legislative seats. However, the order of November 15, 1971 here appealed from does not make that reduction. Only the final judgment of January 25, 1972 makes the reduction. Only an appeal from that Judgment

would fairly present the question of the validity of the District Court's plan of apportionment. That is the teaching of *Goldstein v. Cox, supra*. Appellant has simply appealed prematurely and from the wrong order. See *Whitcomb v. Chavis*, 403 U.S. 124, 138 n. 19 (1971).

The mere fact that an injunction was ordered against the named defendants, prohibiting them from holding future elections in the old legislative districts, does not permit the appellant to take a direct appeal to this Court. The question of the size of the legislature is not a decision fairly encompassed within the injunctive order. Supreme Court Rule 15 (c).

Appellant relies on *Ely v. Klahr*, 403 U.S. 108 (1971); *Perez v. Ledesma*, 401 U.S. 82 (1971); *Swann v. Adams*, 385 U.S. 440 (1967) and *Reynolds v. Sims*, 377 U.S. 533 (1964) as cases which sustain the direct appeal jurisdiction of this Court. *Swann v. Adams, supra;* and *Reynolds v. Sims, supra*, were both decided prior to this Court's decision in *Goldstein v. Cox, supra*. In addition, *Swann v. Adams, supra*, was an appeal from a final order refusing to grant an injunction, and *Reynolds v. Sims, supra*, was an appeal from a final order granting an injunction. 377 U.S. at 522. They clearly came within the provisions of 28 U.S.C. §1253.

In *Perez v. Ledesma, supra*, this Court held that the final orders of a Three-Judge Court suppressing certain evidence were the equivalent of injunctive orders against the appellants, creating a right of direct appeal. 401 U.S. at 84. *Ely v. Klahr, supra*, was an appeal from a final order refusing to enjoin the enforcement of the Arizona Legislature's most recent effort to reapportion itself. 403 U.S. at 113-114. None of these cases sustained direct appeal jurisdiction from interlocutory declaratory judgments. Hence, they supply no authority in the instant case. For a recent example of this

Court's refusal to entertain an appeal from an interlocutory reapportionment order, see *Whitcomb v. Chavis*, 403 U.S. 124, 138 n. 19 (1971).

Based on the foregoing, the appeal should be dismissed.

III

The Judgment of the District Court Should Be Summarily Affirmed

This Court has held that where the invalidity of a state statute is clear, any further appeal from similar rulings should be summarily affirmed. *Bailey v. Patterson*, 369 U.S. 31 (1962).

In *Bailey*, this Court said:

> "We have settled beyond question that no State may require racial segregation of interstate or intrastate transportation facilities. *Morgan v. Virginia*, 328 U.S. 373; *Gayle v. Browder*, 352 U.S. 903; *Boynton v. Virginia*, 364 U.S. 454. The question is no longer open; it is foreclosed as a litigable issue. Section 2281 does not require a three-judge court when the claim that the statute is unconstitutional is wholly insubstantial, legally speaking, nonexistent. *Ex Parte Poresky*, 290 U.S. 30; *Bell v. Waterfront Commission*, 279 F. 2d 853, 857-858. We hold that three judges are not required when, as here, prior decisions make frivolous any claim that a state statute on its face is not unconstitutional." 369 U.S. at 33.

Appellees respectfully submit that under the decisions of this Court in *Whitcomb v. Chavis, supra; Swann v. Adams, supra; Reynolds v. Sims, supra; Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), and the many other reapportionment deci-

sions of this Court, the Minnesota reapportionment statutes found in Minnesota Statutes 1969, §§2.021 through 2.712 are clearly unconstitutional. No party argues to the contrary, either here or in the District Court. Therefore, the order of the District Court for the District of Minnesota should be affirmed summarily, if this Court determines it has jurisdiction of the instant appeal.

Appellees' motion for affirmance is also predicated upon the fact that the instant appeal is taken only from the remedy ordered by the Court below. Even if it were conceded, *arguendo*, that Minnesota Statutes 1969, §2.031 were not unconstitutional, the final order of the District Court dated January 25, 1972, adopting a plan of reapportionment including a reduced size legislature would not be invalid.

There is no provision in the Minnesota Constitution fixing, immutably, the size of the Minnesota Legislature. The only basis for concluding that state policy calls for 67 legislative districts is that apportionment statutes since 1913 had prescribed that number of state senate districts. It is submitted, however, that the District Court was correct in ruling that there is no evidence that present state policy favors that number. Indeed there is evidence to the contrary, since the Governor of the State of Minnesota has recommended that the size of the legislature be reduced and also has vetoed a legislative plan which calls for continuation of the 67 Senate Districts. (A-32).

The mere fact that from 1913 to 1971 no change in the number of senate districts occurred does not create a state policy. It is noted that during most of that time (1913 to 1959) no legislative reapportionment of any kind occurred in Minnesota, contrary to the expressed provisions of Article IV, Sec-

tions 2 and 23 of the Minnesota Constitution.[7] Only after the decision of Judge Devitt, in the case of *McGraw v. Donovan*, 164 F. Supp. 184 (D. Minn. 1958), did the legislature reapportion the state at all.[8] State policy cannot be inferred from such unconstitutional legislative inaction. Furthermore, from statehood (1858) to 1913 there were eight reapportionments,[9] all of which changed the size of the legislature in one manner or

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[7] Article 4, §2 states: "The number of members who compose the Senate and House of Representatives shall be prescribed by law, but the representation in the Senate shall never exceed one member for every 5,000 inhabitants, and in the House of Representatives one member for every 2,000 inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof. As amended Nov. 3, 1964."

Article 4, §23 states: "The legislature shall have the power to provide by law for an enumeration of the inhabitants of this State, and also have the power at their first session after each enumeration of the inhabitants of this State made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article. As amended Nov. 3, 1964."

[8] That reapportionment was based upon the 1960 population statistics and was adopted in 1959 legislative session. Thereafter there was no further reapportionment until the decision of a Three-Judge court in Honsey v. Donovan, 236 F. Supp. 8 (D. Minn. 1964). Then, in response to the opinion of then Circuit Judge Blackmun, a special session of the legislature adopted the reapportionment statute now found invalid in the present action.

[9] The District Court in footnote 2 of its Memorandum accompanying the December 3, 1971 Order noted that the size of the legislature has been changed ten times since 1857. The changes are as follows:

	Senate	House	Total
1857	37	80	117
1860	21	42	63
1866	22	47	69
1871	41	106	147
1881	47	103	150
1889	54	114	168
1897	63	119	182
1913	67	130	197
1917	67	131	198
1959	67	135	202
1968	67	135	202

another. No discernible state policy existed then or now,[10] Hence, the District Court acted properly and within its discretion in exercising its remedial equitable jurisdiction.

Appellant erroneously contends:

> "Of necessity, if the application of Minnesota Statutes, 1969, §2.031, prescribing the number of legislative districts, was erroneously declared violative of the Fourteenth Amendment and enjoined, the District Court lacked jurisdiction to issue its order of December 3, 1971, announcing its intent to reduce significantly the number of legislative districts (App. at A-6)." Jurisdictional Statement at p. 3. See also Id. at p. 6.

Appellants have cited no authority which would have required the District Court to be bound by Minnesota Statutes 1969, §2.031 even if it were constitutional. The District Court had the power to fashion the equitable remedy it deemed proper in the exercise of its discretion to correct past wrongs. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971). Nothing in Minnesota Statutes 1969, §2.031 could impinge on, or fetter that discretion. *Butterworth v. Dempsey*, 237 F. Supp. 302, 306 (D. Conn. 1965). This rule is especially applicable since §§2.021 and 2.031 were, by their terms, intended to last only until the next reapportionment.[11]

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[10] Section 2.031 must be read in connection with Section 2.021 which provides: "For each legislature, until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 135 members. Laws 1966, Ex. Sess. c. 1, §1." Read together they show that the number of legislative districts is fixed by the statute only until the next succeeding reapportionment. Unless read together each section lacks independent significance.

[11] See n. 10, supra.

As noted by this Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971):

> "Once a right and a violation has been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

See also *Hecht v. Bowles*, 321 U.S. 329, 330 (1944) where this Court said:

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs, as well as between competing private claims."

Wold v. Anderson, 327 F. Supp. 1343, 1344 (D. Mont. 1971), states the rule that:

> "It is the opinion of the court that neither a desire to maintain a given number of seats in the legislative bodies nor a desire to respect county lines will justify the imbalance created by [the apportionment statute] and we declare it to be unconstitutional."

Similarly in *Butterworth v. Dempsey*, 237 F. Supp. 302, 306 (D. Conn. 1965), the court said:

> "It is fundamental that state limitations—whether constitutional, statutory, or decisional—cannot bar or delay relief required by the Federal constitution. . . .

"It has been determined that the courts must use their powers as courts of equity to enforce the rights of the plaintiffs and those similarly situated even though it involves the deciding of political questions by the court." Id. at 308.

In devising its plan of apportionment, the District Court acted only to prevent a breakdown or disruption of the essential state government processes. It acted under its equitable jurisdiction called into play by legislative nonfeasance. Since the remedy adopted by the District Court is only provisional in nature, *People v. Kerner*, 33 Ill. 2d 460, 211 N.E. 2d 736 (1965), it can be overturned at any time by a constitutionally valid plan of apportionment adopted by the Minnesota Legislature, *Connor v. Johnson*, 265 F. Supp. 492 (D. Miss. 1967).

The District Court was well within its equitable discretion in fashioning its interim relief. Appellees' Motion to Affirm should be granted.

IV

Failure of This Court to Dismiss the Appeal or Affirm the Order of November 15, 1971 Will Work Great Hardship Upon the Electoral Process of the State

Pursuant to the request of plaintiff-appellees and all other parties except appellant, the District Court fashioned its equitable remedy with all deliberate speed, having in mind this Court's oft repeated desire to avoid disruption of a state's electoral process in legislative apportionment cases.

The general election for members of the Minnesota Legislature will take place on November 7, 1972. The primary election will take place on September 12, 1972. The time during which candidates may file for public office commences on July 5, 1972, and ends on July 18, 1972. The date by which a candidate must establish residency in a particular Senate or House District in order to be eligible to run for election in that District is May 7, 1972. Political party county conventions which make endorsements of candidates for legislative offices are to be held March 18 through March 26 (Democratic-Farmer-Labor party) and March 17 through March 25 and April 7 through April 15 (Republican party). The statutory first steps in the electoral process, the political party precinct caucuses have already been held on February 22, 1972. Minnesota Statutes, 1969, §§202.22 through 202.27.

For this Court to prolong the uncertainty inherent in the present delay by bringing the matter on for plenary consideration will work far greater havoc upon the legislative election process than any alleged error in the judgment of the District Court. If prospective candidates do not know what districts they must run in, many will hesitate to run at all and others will be unable to secure the political party endorsement necessary for their campaigns. Still others will not have sufficient time to move into the district of their choice. When combined with the detrimental effect of further delay upon the election machinery and officials, and the essentially provisional nature of the relief granted below, considerations expressed in *Ely v. Klahr*, 403 U.S. 108, suggest that the appeal be dismissed or the Order of November 15, 1971 be affirmed summarily.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

RICHARD A. BEENS, et al,

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota, et al,

Defendants,

THE SIXTY-SEVENTH MINNESOTA STATE SENATE,

Intervenor,

ROLLIN H. CRAWFORD, et al,

Intervenors.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

No. 4-71-Civ-151

Notice is hereby given that the Sixty-seventh Minnesota State Senate, the defendant in intervention above named, hereby appeals to the Supreme Court of the United States from the injunction issued in this action on November 15, 1971.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN, individually and on behalf of All Citizens and Voters of the State of Minnesota similarly situate,

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota; GEORGE B. HICKEY, Hennepin County Auditor; CHARLES LeFEBVRE, Anoka County Auditor; JOSEPH W. NOTERMAN, Scott County Auditor; WILLIAM J. SCHNEIDER, Carver County Auditor, on behalf of themselves and all County Auditors of the State of Minnesota.

Defendants.

COMPLAINT

Plaintiffs above named for their cause of action allege and state as follows:

1. This Court has jurisdiction of the subject matter involved under and by virtue of the provisions of 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. § 1343(3),(4); 28 U.S.C. § 2201, etc.

2. Plaintiffs request this Honorable Court to convene a three-judge Court to hear and determine this matter pursuant to the provisions of 28 U.S.C. §§ 2281 and 2284.

3. Plaintiffs are citizens and qualified voters of the United States of America and of the State of Minnesota residing in

various counties, legislative districts and congressional districts in the State of Minnesota as appears with greater particularity in Exhibit "A" which is attached hereto and made a part hereof by reference.

4. Plaintiffs bring this action on behalf of themselves and all other citizens and voters of the United States of America and the State of Minnesota similarly situated who have been denied equal protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named plaintiffs are typical of the claims of the members of this class; and these plaintiffs will fully and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications which would establish incompatible standards of conduct for the named defendants. The common question of law which predominates is the constitutionality of the scheme of legislative apportionment established by Laws 1966, Ex. Sess. c. 1, Minnesota Statutes 1969, §§ 2.031 through 2.712 inclusive.

5. The defendants are all citizens of the United States and of the State of Minnesota and reside within the State of Minnesota. Defendant Arlen Erdahl is the duly elected, qualified and acting Secretary of State of the State of Minnesota. Under the provisions of Minnesota Statutes 1969, chapters 203 through 211 inclusive, he is charged in his official capacity with the duty of keeping records of state elections, giving notice of state elections, receiving the filings of candidates for state offices, preparing ballots and instructions to voters, distributing copies of the election laws of the state, receiving

election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to legislative candidates in multi-county districts, serving on the State Canvassing Board, and various other election duties.

6. Defendant George B. Hickey is the duly qualified and acting Auditor of Hennepin County, State of Minnesota; defendant Charles LeFebvre is the duly qualified and acting Auditor of Anoka County, Minnesota; defendant Joseph W. Noterman is the duly qualified and acting Auditor of Scott County, Minnesota; defendant William J. Schneider is the duly qualified and acting Auditor of Carver County, Minnesota.

7. This action is brought against the aforesaid County Auditors individually and as representatives of all other county auditors similarly situated in the State of Minnesota; such persons are so numerous as to make it impracticable to bring them all before the Court by way of joinder; there is a predominating common question of law, to wit: the constitutionality of the legislative apportionment scheme directed by Laws 1966, Ex. Sess. c. 1, Minnesota Statutes 1969, §§2.031 through 2.712; the defenses of the representative parties are typical of the defenses of the class of county auditors; the representative parties will fairly and adequately protect the interests of the class; and the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for plaintiffs.

8. Said county auditors are charged with various election duties in their respective counties including but not limited to preparation of ballots, furnishing of ballots, canvassing of returns of legislative elections; providing certificates of elec-

tion to successful legislative candidates in single county legislative districts; certifying to the Secretary of State the results of the canvass in their respective counties and various other miscellaneous duties with respect to primary and general elections.

9. This case arises under the Fourteenth Amendment, Section 1 to the Constitution of the United States which provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. A state statute which effects an apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provisions.

10. Article IV, Section 2 of the Minnesota State Constitution provides:

> "The number of members who compose the Senate and House of Representatives shall be prescribed by law, but the representation in the Senate shall never exceed one member for every five thousand inhabitants, and in the House of Representatives, one member for every two thousand inhabitants. The representation in both houses shall be apportioned equally throughout the sections of the state, in proportion to the population thereof."

11. Article IV, Section 23 of the Minnesota State Constitution provides:

> "The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state and also have the power at their first session after each enumeration of the inhabitants of this state made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion the new senators and representatives among the several districts according to the provisions of section Second of this Article."

12. Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provisions of the Minnesota Constitution to have the entire membership of the Minnesota Legislature apportioned and elected on the basis of the 1970 Federal Census. The intent and purpose of the aforesaid provisions of the Minnesota Constitution is to require that the members of the Legislature be elected by the people of the State of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota State Senators and Representatives must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.

13. The United States Census for 1970 shows that the state legislative districts as established by the State Legislature in Laws 1966, Ex. Sess. c. 1, are now unequally apportioned; that despite the compilation of said Census, the Legislature has failed and neglected to reapportion the legislative districts in the State of Minnesota; and the present apportionment of the state legislative districts is not based upon any

logical or reasonable formula whatsoever, but is arbitrary and capricious.

These plaintiffs are residents, citizens and voters of certain counties the population of which has increased since the last census at a rate greater than the state as a whole. Exhibit "B" attached hereto and made a part hereof by reference shows that between 1960 and 1970 the population of the State of Minnesota increased by 11.5 percent. However, the increase in population in Anoka County, the residence of plaintiff Beens, was 79.9 percent; in Scott County, the residence of plaintiff Meuwissen was 48.0 percent and in Carver County, the residence of plaintiff Krass was 32.5 percent. Other counties in which there has been a major increase in population greater than that of the state include Dakota County, 78.5 percent; Sherburne County, 42.6 percent and Washington County, 58.2 percent. The present population of each county and of the entire state, as determined by the 1970 Federal Census, appears more fully in Exhibit "B". The present population of each legislative district as now prescribed by Minnesota Statutes 1969, §§ 2.031 through 2.712 inclusive, appears more fully in Exhibit "C" which is attached hereto and made a part hereof by reference. The ideal population for each Representative District is 28,155. The ideal population for each Senate District is 56,792.

14. The unequal representation reflected in Exhibit "C" deprives plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States including the rights of due process of laws and the equal protection of the laws. It further deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

15. The common relief sought against all parties in their official capacities relates to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of senators and representatives of said State Legislature calling for elections therefore; the appointment of election judges therefore; the registration of qualified voters therefore; the holding of elections therefore; the certifying of the result of said election; the preparation of ballots therefore, and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of state representatives and senators to the Minnesota State Legislature.

16. The plaintiffs are informed and believe and therefore allege that the Legislature of the State of Minnesota will not pass a law reapportioning itself in conformity with the United States Constitution and the Constitution of the State of Minnesota during the 1971 Legislative Session. The plaintiffs further allege on information and belief that all of the defendants intend to and will, unless sooner restrained by an order of this Court, conduct the election for the next legislature, namely the 1973 Legislature, during the year 1972, on the basis of the senatorial and representative districts described by Minnesota Statutes §§ 2.031 through 2.712, and that until there is legislative reapportionment defendants will continue to do so in subsequent elections of members of the Minnesota State Legislature.

Plaintiffs further allege that they intend to and will vote in the State primary and general election in 1972 and thereafter for candidates for State legislative offices; and that said elections conducted in accordance with Minnesota Statutes §§ 2.031 through 2.712 will continue to deprive plaintiffs of their rights guaranteed under the Constitution of the United States and of the State of Minnesota.

17. In the absence of reapportionment of the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts prescribed by Minnesota Statutes §§ 2.031 through 2.712, has deprived and will continue to deprive plaintiffs of their constitutional rights in that:

(a) They are and will be arbitrarily deprived of liberty and property without due process of law, and are and will be arbitrarily deprived of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.

(c) They are and will be in substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of an equally apportioned state legislature as guaranteed by Article 4, Sections 2 and 23 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7 Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

18. By reason of the failure of the Legislature of the State of Minnesota to reapportion the legislative districts of the state in conformity with the Minnesota Constitution, thus violating the constitutional rights of these plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court take jurisdiction of this matter; that a special three-judge court be called to hear and determine this action as by law provided in 28 U.S.C. § 2281, et seq. and declare the rights of these plaintiffs pursuant to 28 U.S.C. § 2201 in the premises to wit:

(a) That the present legislative apportionment of the State of Minnesota has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs' equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

(b) That Minnesota Statutes 1969, §§ 2.031 through 2.712 are void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Minnesota because of the failure to reapportion the legislative districts of the State of Minnesota in accordance with present population distribution as herein alleged.

(c) That the right of the plaintiffs to vote as guaranteed by Article 1, Section 2 and Article 7, Section 1 of the Constitution of the State of Minnesota has been impaired.

Plaintiffs further pray that after hearing of this action, The Court grant further relief in accordance with 28 U.S.C. § 2202, and that it:

(a) Restrain the defendants from furnishing forms for nominations, from receiving nominations and petitions and papers, from certification of nominations or elections, and from any other acts necessary to the holding of elections for members of the Minnesota Legislature in districts as established by Minnesota Statutes 1969, §§ 2.031 through 2.712 until such time as said Legislature enacts legislation reappor-

tioning the state senatorial and representative districts according to the Constitution of the State of Minnesota.

(b) Notify the Legislature of the State of Minnesota presently in session, that this Court shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new apportionment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of apportionment by said Legislature that this Court will make a determination of a proper apportionment system for the State of Minnesota.

Further plaintiffs pray that the Court grant such other and further relief as to this Court may seem just and proper.

Dated: April 9, 1971.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-71-Civ. 151

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN, individually and on behalf of All Citizens and Voters of the State of Minnesota similarly situate,

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota; GEORGE B. HICKEY, Hennepin County Auditor; CHARLES LeFEBVRE, Anoka County Auditor; JOSEPH W. NOTERMAN, Scott County Auditor; WILLIAM J. SCHNEIDER, Carver County Auditor, on behalf of themselves and all County Auditors of the State of Minnesota,

Defendants.

MEMORANDUM ORDER

Plaintiffs seek several kinds of relief in this action. They have asked the three judge court to issue a declaratory judgment which in effect would declare the Minnesota legislature to be unconstitutionally apportioned; to restrain the defendants from any acts necessary for the holding of an election; and, in the absence of action by the Minnesota legislature, to judicially reapportion that body. They assert that this is a class action and that they represent all the citizens of the State

of Minnesota who have been denied their constitutional rights by virtue of the present scheme of apportionment.

There are two separate motions to intervene, pursuant to Rule 24 F.R. Civ. P., now before this Court. The first to be considered will be that of the Minnesota Senate. Their motion is opposed by the plaintiffs on the grounds that it is not timely; that the applicant has no interest in the case; and that whatever interest the Senate might have would be adequately protected by the present plaintiffs.

Even though their motion is quite late, especially in light of the time pressures which are inherent in a reapportionment case, the Senate will be allowed to intervene. Intervention is to be liberally granted under Rule 24. *Peterson v. U.S.*, 41 F.R.D. 131 (D. Minn. 1966); 2 Barron & Holtzoff, Federal Practice & Procedure § 591. Intervenor's counsel have assured this Court that their brief is already prepared and that their intervention will not occasion any delay in hearing this case. Thus they come within the liberal intervention standards set out by the Eighth Circuit in *Kozak v. Wells*, 278 F. 2d 104 (8th Cir. 1960). There the court allowed intervention even though the motion was made almost a year after filing of the complaint. In *Kozak* the court said, "Timeliness is to be determined from all the circumstances shown." P. 109. One of the primary "circumstances" influencing the *Kozak* court was the lack of prejudice caused by the intervention.

Here there is no allegation that any of the parties will be prejudiced by intervention at this point. The intervenor will not delay the adjudication of this controversy. Thus the circumstances indicate that intervention should be allowed.

Likewise, the Senate has an interest in this case, since it will be directly affected by its outcome. In a similar situation the

California Senate was held to have a sufficient interest to intervene. *Silver v. Jordan*, 241 F. Supp. 576 (S.D. Cal. 1964). Plaintiffs' attempt to distinguish *Silver* is without merit. The fact that only one house of the legislature was there being challenged is not determinative. The Minnesota Senate has just as much interest in its makeup here, where both houses are challenged, as the California Senate had there, where only one was challenged.

Moreover, in at least one other reapportionment case the legislature was made a party. In *Dungan v. Sawyer*, 250 F. Supp. 480 (D. Nev. 1965), a three judge court had such strong feelings about the legislature's interest that the Nevada legislature was joined as a party on the motion of the court. In light of these precedents it would be inappropriate to say that the Senate has no interest in the case.

Therefore, it is hereby ordered that the Minnesota Senate be allowed to intervene. However, intervention is subject to the requirement that any pleadings or briefs be served upon plaintiffs' counsel upon receipt of this Order, after which plaintiffs will serve any reply by October 27, 1971.

Three individuals also seek to become parties to the suit. They ask, pursuant to Rule 23(c)(1), for a determination as to the propriety of this suit's continuance as a class action. If it is determined to be a proper class action, they seek to enter an appearance through their own counsel as allowed by Rule 23(c)(2)(C). In the alternative, if there is a determination that it is not a proper class action, they request permission to intervene under the provisions of Rule 24.

Rule 23(c)(1) requires a determination of whether an action brought as a class action may be so maintained. Plain-

tiffs assert that this is a class action because there is a "common question of law which predominates." However, the "common question of law" finding is not the only one which a court must make before allowing a class action of this type to proceed. The class action approach must also be superior to other available methods for the fair and efficient adjudication of the controversy. Rule 23(b)(3).

One of the factors which must be considered in determining if a class action is the best method is whether difficulties are likely to be encountered in the management of the class. If this action is allowed to proceed as a class action, it would be totally unmanageable. There are stringent notice requirements for a Rule 23(b)(3) class action. See Rule 23(c)(2). In this case notice would require a great deal of time, to say nothing about the tremendous expense of notifying every registered voter in the State of Minnesota. To allow this suit to be maintained would also open the door to uncontrollable delay, since many might seek to enter individual appearances, as is allowed by Rule 23(c)(2)(C). More parties mean more briefs, thus making not only the ultimate decision by the three judge court more difficult, but also making briefing schedules and other administrative details almost impossible.

The fact that this action is not maintainable as a class action, at least as to the alleged class of plaintiffs, will have no effect on its outcome. Few if any of the prior reapportionment cases have been class actions. Any declaration as to the validity or invalidity of the present apportionment or subsequent redistricting plan which the three judge court may have to adopt will be equally valid and enforceable whether there are three or several hundred thousand plaintiffs.

Thus petitioners Crawford, King, and Voss are not members of the class since no class exists, and they will not be allowed to enter an appearance. However, they will be allowed to intervene under Rule 24(b), since their claims and those in the main action have questions of law in common. However, intervention is subject to the requirement that any pleadings or briefs be filed by October 20, 1971, after which plaintiffs will have until October 27, 1971, to reply.

These motions to intervene are only granted because they will not delay prosecution of this action. Time is of the essence here. Any further motions to intervene will delay this action. Any delay would be extremely prejudicial to plaintiffs, and therefore this Court is strongly inclined to deny any other motions for intervention.

October 14, 1971.

EARL R. LARSON
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-7-Civ. 151

RICHARD A. BEENS, et al,

Plaintiffs,

vs.

ARLEN ERDAHL, Secretary of State of the State of Minnesota, et al,

Defendants,

THE SIXTY-SEVENTH MINNESOTA STATE SENATE,

Intervenor,

ROLLIN H. CRAWFORD, et al,

Intervenors.

DEMOCRATIC FARMER LABOR PARTY OF MINNESOTA, et al,

Amicus Curiae.

FINDINGS AND ORDER

In light of the submission of pleadings and briefs by all the parties, the hearing held November 5, 1971 before this Court and the filing by the parties of a Stipulation to the relevant statistics, data and computations with respect to the present apportionment of the Minnesota Legislature, the Court makes the following findings:

1. This three-judge Court has proper jurisdiction of the subject matter of this lawsuit. 28 U.S.C. §1343(3), (4); 42 U.S.C. §1983; 28 U.S.C. §2201, et seq.; 28 U.S.C. §2281;

Swann v. Adams, 385 U.S. 440 (1967); *Reynolds v. Sims*, 377 US. 533 (1964).

2. The present apportionment of the Minnesota Legislature, as set out in Minnesota Statutes 1969 §§2.021 through 2.712, when applied in light of the 1970 Federal Census results in: a deviation of 25% or more from the population norm of 56,792 per Senatorial District in 17 of the 67 Senatorial Districts; a deviation of 15% or more in 36 of the 67 Senatorial Districts; the ability of 41.67% of the population of the State of Minnesota to elect a majority of the State Senators; a ratio of 2.49 to 1 between the most populated Senatorial District (District 12—97,760) and the least populated Senatorial District (District 40—39,332); a deviation of 25% or more from the population norm of 28,185 per House District in Districts electing 37 of the 135 members of the State House of Representatives; a deviation of 15% or more in Districts electing 72 of the 135 members of the State House of Representatives; the ability of 40.66% of the population of the State of Minnesota to elect a majority of the members of the State House of Representatives; and a ratio of 3.57 to 1 between the most populated House District (District 12B—60,596) and the least populated House District (District 23A—16,974).

3. The current apportionment of the Minnesota Legislature, giving rise to the disparities enumerated above, clearly fails to meet the standards of the United States Constitution as interpreted by the Supreme Court. See, *e.g.*, *Swann v. Adams*, 385 440 (1967); *Davis v. Mann*, 377 U.S. 678 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964). See also, *Whitcomb v. Chavis*, —— U.S. ——, 29 L. Ed. 2d 563, Part VII (June 7, 1971).

4. The Minnesota Legislature adjourned *sine die* on October 30, 1971, and is not scheduled to reconvene until after the

1972 General Elections. Since there is no present reason to believe that the State will enact a new plan of legislative apportionment prior to the 1972 General Elections, this Court finds that it should proceed to adopt an apportionment plan which will pass constitutional muster in time to be implemented in the 1972 General Elections.

Having made the above findings of fact and law, the Court hereby:

DECLARES: Minnesota Statutes 1969, §§2.021 through 2.712 to be in violation of the Constitution of the United States.

ORDERS: the defendants herein, including Arlen Erdahl, Secretary of State of the State of Minnesota and all County Auditors of the State of Minnesota, enjoined from holding or conducting any future elections under the present Apportionment Statutes.

ORDERS: the appointment of Professor Adam C. Breckenridge of Lincoln, Nebraska and Joseph T. Dixon, Jr. of Minneapolis, Minnesota as Special Masters to aid the Court in adopting a new plan of apportionment.

ORDERS: the adoption of the following schedule for proceeding with this matter: November 12, 1971—the final day for the parties and amici curiae to submit to the Court suggested criteria to be used by the Court in adopting a new plan of apportionment; the Court will thereafter announce the criteria it will utilize in reapportioning the State on the earliest possible date; December 7, 1971—the final day for the parties and amici curiae to submit to the Court proposals for reapportioning the State, such proposals to be consistent with the criteria previously announced by the Court; December 21, 1971—the final day for the parties and amici curiae to submit to the Court comments concerning the reapportionment pro-

posals of the other parties and amici curiae; six copies of all suggested criteria, plans of reapportionment and comments with respect to other reapportionment proposals shall be provided to the Court and copies of each shall be served on each of the other parties and amici curiae.

November 15, 1971.

EARL R. LARSON
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al

vs.

ARLEN ERDAHL, et al

ORDER

The Court having entered its findings and order, dated November 15, 1971, declaring the present legislative apportionment statute of Minnesota, M.S.A. §§2.021 through 2.712, to be invalid and in violation of the Constitution of the United States and enjoining the conduct of future elections thereunder,

NOW THEREFORE, the Court states its intention to adopt a plan of apportioning the Minnesota legislature so that each House and Senate District, for occupancy by a single member, and not overlapping, shall consist of a compact and contiguous

area of equal population according to the latest available 1970 census figures which, subservient to the basic principle of equality of population, will respect the integrity of existing boundaries of political subdivisions of the State. Minor deviations not to exceed two percent will be considered if they facilitate the maintenance of such boundaries, but no consideration will be given to the residence of incumbent legislators or the voting pattern of electors. Population estimates will not be an acceptable method of computing the size of a legislative district. Each legislative district must consist of identifiable units from the corrected third count of tapes of the 1970 Federal Census.

Proposals to reduce the size of the Senate and the House have been submitted to the Court. They have sufficient merit to justify the Court in holding further hearings on this subject. Accordingly, and for the reasons more fully set forth in the attached memorandum, the Court will accept additional briefs on this issue from parties, intervenors and amici on or before 5:00 P.M., Wednesday, December 1, 1971, and will hear oral argument on the issue at 2:00 P.M., Thursday, December 2, 1971, in the Courtroom of the Honorable Edward J. Devitt, Federal Court House, St. Paul, Minnesota. The Court will permit additional amici to file briefs on the matter.

Parties, intervenors and amici desiring to submit briefs shall file six (6) copies with the Clerk of Court in accordance with the time schedule outlined above. The briefs should be addressed to the following questions: (1) Is it within this Court's discretion to significantly reduce the size of the Senate and the House in this proceeding? (2) If the Court has discretion to take such action, should it exercise its discretion? (3) If the Court determines that a reduction in the size of the

legislature is desirable, to what size should it reduce the Senate and House?

It is further ORDERED that: the Motion of Jack Fena and Rudy Perpich for leave to appear as amicus curiae for the purpose of submitting a plan of apportionment is hereby granted.

It is further ORDERED that the Motion of the Americans for Democratic Action, Minnesota Chapter, for leave to file a brief as amicus curiae on the question of staggered senatorial terms is hereby granted, provided that such brief is filed with this Court by December 1, 1971. Parties, intervenors and other amici are invited to file briefs on this issue.

It is further ORDERED the Motion to dismiss Joseph Dixon as a Master, filed by Intervenors Crawford, King and Voss, is hereby denied.

Dated: November 26, 1971.

GERALD W. HEANEY
Judge
United States Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

EARL R. LARSON
Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al.

vs.

ARLEN ERDAHL, et al.

MEMORANDUM IN SUPPORT OF ORDER

We are persuaded that there is sufficient merit to the argument that the size of the Minnesota Legislature should be significantly reduced to permit additional briefs and argument.

If a plan of reapportioning the State had been adopted by the Legislature and approved by the Governor, we would be primarily concerned with whether the plan apportioned the State into legislative districts of equal size, and whether the districts were compact and contiguous. But no plan has been presented to us, and we have the task of apportioning the State Legislature.

While it is argued that our authority is limited to accepting the present number of Senate and House Districts, a persuasive argument has been made to the contrary. And we must state frankly that we are reluctant to proceed to apportion the State on the basis of 67 Senate Districts and 134 House Districts, and that we have a present preference to apportion both houses into a lesser number of districts.

It is clear that in situations such as this, where the Court has been forced to adopt its own plan of apportionment as opposed to merely passing on the constitutionality of a state-

enacted plan, we have greater flexibility and discretion in fashioning an appropriate remedy and must view our task in a different light. For example, while the Supreme Court has consistently approved legislatively enacted multi-member districts, *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Burns v. Richardson*, 384 U.S. 73 (1966); *Forson v. Dorsey*, 379 U.S. 433 (1965); *Burnette v. Davis*, 382 U.S. 42 (1965), it has recently stated:

> "The District Court's judgment was that single-member districting would be ideal for Hinds County. We agree that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general rule."

Connor v. Johnson, 402 U.S. 690, 692 (1971). Here, the question is whether our discretion extends to reducing the size of the Legislature.

It appears that our discretion is not fettered by state constitutional or statutory provisions. The Minnesota Constitution contains no provisions fixing the number of legislators at its present level, and the statute establishing the present size states that the number of legislators shall remain so fixed "until a new apportionment shall have been made * * *." *Minnesota Statutes 1969*, §2.021.

In support of the argument that the size of the Minnesota Legislature should be reduced, it is pointed out that the Minnesota Senate, of 67 members, is the largest in the nation and the Minnesota Legislature is the eighth largest in the nation;[1]

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[1] The Citizens' Conference on State Legislatures, which recently published a study of all fifty legislatures, rated the Minnesota State Legislature tenth highest in overall characteristics. The legislatures were evaluated on functional efficiency, accountability, independence, representativeness, and state of informedness of the legislators. Even though the Minnesota Legislature ranked tenth overall, the number one recommendation of the Conference for improving the Legislature was to reduce its size. CITIZENS CONFERENCE ON STATE LEGISLATURES, THE SOMETIMES GOVERNMENT, 1971, at 239.

that the Governor of the State of Minnesota recommended, in a special message, that the size of the Legislature be substantially reduced;[2] that the size of the Minnesota Legislature has varied from time to time;[3] and that the respected "Minnesota Poll" reported on January 10, 1971, that fifty-two per-

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[2] Governor Wendell R. Anderson, noting that "** * the unusual size of the Legislature in Minnesota makes it cumbersome, and it is certainly true that other states are able to carry out their legislative responsibilities with fewer members, * * *" recommended that the Legislature take steps to reduce its size. The Governor also recognized that a legislature is not likely to reduce its own size voluntarily. Governor Wendell R. Anderson, *Ethics in State Government and Legislative Reform*, a Special Message to the 67th Session of the Legislature of Minnesota, March 23, 1971.

This latter view was shared by the Honorable Chris L. Erickson, a Minnesota State Senator from 1951 to 1963 and Chairman of the Senate's Committee on Elections and Reapportionments during his last term of office, who submitted a statement to this Court relative to the size of the Legislature. Mr. Erickson expressed the view that a reduction in the size of the Legislature would be of great benefit to the public and further indicated that, in view of the Legislators' reluctance to vote themselves out of office, such a reduction could be accomplished only by the courts.

[3] The size of the Legislature has been changed ten times since 1857. In 1860, the size was reduced from 117 to 63. Since 1860, the size of the Legislature has been consistently increased. The changes are as follows:

	Senate	*House*	*Total*
1857	37	80	117
1860	21	42	63
1866	22	47	69
1871	41	106	147
1881	47	103	150
1889	54	114	168
1897	63	119	182
1913	67	130	197
1917	67	131	198
1959	67	135	202
1966	67	135	202

1957-58 Minnesota Legislative Manual 127; Laws 1913, Ch. 91; Laws 1917, Ch. 217; Laws 1959, Ch. 45; Laws 1966 Extra Session, Ch. 1.

cent of all Minnesota adults favor a reduction in size of the Minnesota Legislature.[4]

It is also argued that a smaller legislature could be better housed and better staffed without additional expenditures, and that improved transportation and communication make larger Senate and House Districts feasible. Finally, it is urged that a smaller number of Senate and House Districts would reduce the necessity for artificial boundary arrangements in the metropolitan areas of the State.

Arguments against reducing the size of the Legislature have not been presented to this Court, perhaps because the petition in support of a reduction was not filed until November 17, 1971. While the Court is generally familiar with these arguments, it feels that opponents of reduction ought to have an opportunity to present them to the Court.

The Court now has the responsibility for apportioning the Minnesota State Legislature in accordance with the Constitution of the United States. It intends to fulfill that responsibility in the way that will best meet the needs of the people of the State. The Minnesota Legislature can always change what we do in this proceeding, but the people of the State may have to live with the apportionment plan prepared by this Court for some years. We want the plan which we devise to be the best possible.

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[4] The poll of January 10, 1971, showed that fifty-two percent of all adults favored a reduction in the size of the Legislature. Fifty-seven percent of DFL'ers, forty-seven percent of Republicans, and fifty percent of independents favored reduction.

Thirty-four percent of all adults opposed a reduction of the Legislature's size. Thirty-three percent of DFL'ers, thirty-seven percent of Republicans, and thirty-five percent of independents were among those opposed.

No opinion on the subject was held by fourteen percent of all adults, ten percent of DFL'ers, sixteen percent of Republicans, and fifteen percent of independents. MINNEAPOLIS TRIBUNE, January 10, 1971.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al.

vs.

ARLEN ERDAHL, et al.

ORDER

On November 15, 1971, this Court declared the present legislative apportionment statute of Minnesota, M.S.A. §§2.021 through 2.712, to be invalid and in violation of the Constitution of the United States, and enjoined the conduct of future elections thereunder.

On November 26, this Court established the criteria that would be followed by this Court in reapportioning the Legislature, and asked the parties, intervenors and amicus curiae to submit briefs and to argue orally questions relating to the number of Senate and House Districts into which the State should be apportioned. Oral argument was held on December 2, 1971.

NOW THEREFORE, the Court finds that it best can fulfill its duty of apportioning the Minnesota Legislature in accordance with the Constitution of the United States and with due regard for State policy by:

Dividing the State into 35 equally-populated Senatorial Districts having a population norm of 108,713.

Dividing each Senatorial District into three equally-populated House Districts, having a population norm of 36,238, thus providing for a total of 105 House Districts.

It is, therefore, ORDERED that parties, intervenors and amicus curiae may present plans for apportioning the Legislature in accordance with the criteria set forth in the order of November 26 and the order of today, on or before December 27, 1971, and that they may submit comments on the plans of others on or before January 3, 1972.

It is further ORDERED that the motions of the Americans for Democratic Action, insofar as it asks this Court to require staggered terms for senators, is denied.

It is further ORDERED that the motion of the Minnesota Farmers Union for leave to intervene is denied, but that it is given the right to participate in this proceeding as amicus curiae.

Dated: December 3, 1971.

GERALD W. HEANEY
Judge
United States Court of Appeals

EDWARD J. DEVITT
Chief Judge
United States District Court

EARL R. LARSON
Judge
United States District Court

(Filed Dec. 3, 1971. — Harry A. Sieben, Clerk, by Eleanor Mollner, Deputy.)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-Civil-151

RICHARD A. BEENS, et al.

vs.

ARLEN ERDAHL, et al.

MEMORANDUM IN SUPPORT OF ORDER

We have the unrequested burden of reapportioning the Minnesota Legislature. It is a task that the legislative and executive branches of the State can relieve us of by apportioning the Legislature in accordance with the United States Constitution. But until the State acts, we must fulfill our responsibility.

We recognize that any plan drawn by us will not meet with universal favor and may meet with rather general disfavor. But the duty is ours, and we will meet it.

We have, in our orders of November 26 and December 3, established criteria which the parties, intervenors and amicus curiae are requested to follow in preparing plans to apportion the Legislature. The criteria are those which we find best suited to permit compliance with the equal protection standards of the United States Constitution and with State policy to the extent that the latter is consistent with the Constitution.

The only serious questions, that are raised with respect to the criteria, are whether we have the authority to change the size of the Legislature; and if so, to what extent. Our answer is that we must change the size if we are to apportion the State

in accordance with the Federal and State Constitutions, and that we have a right to make those changes which are consistent with the Federal Constitution and State policy.

It is well settled that Federal Three-Judge Courts have jurisdiction to decree existing apportionment plans invalid. *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). It is equally clear that they have equitable authority to adopt an apportionment plan if the Legislature fails to do so. *Ely v. Klahr*, 403 U.S. 108 (1971); *Whitcomb v. Chavis, supra; Scott v. Germano*, 381 U.S. 407 (1965). And, finally, it is established that they can change the size of the Legislature, in apportioning the State in accordance with federal constitutional requirements.[1] To put it simply:

> "* * * Once a right and a violation have been shown, the scope of a District Court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

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[1] In the following cases, the federal courts have altered the existing size of a state legislature: *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz. 1966) (Senate reduced from 31 to 30, House from 80 to 60); *Herweg v. 39th Legislative Assembly*, 246 F. Supp. 454 (D. Mont. 1965) (Senate reduced from 56 to 55, apparently increased size of House); *Paulson v. Meier*, 246 F. Supp. 36 (D. N.D. 1965) (Senate reduced from 53 to 49, House from 113 to 98); *Schaefer v. Thompson*, 240 F. Supp. 247 (D. Wyo. 1964) (Senate increased from 25 to 30). In other cases, federal courts have altered the size of the existing legislatures by adopting a size established in new apportionment plans which had been voided for violating the Federal or State Constitution. *Swann v. Adams*, 263 F. Supp. 225 (D. Fla. 1967); *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 (S.D. N.Y.), *aff'd per curiam*, 384 U.S. 4 (1965). These latter two cases are in accord with our view that if the Minnesota Legislature had passed and the Governor had signed an apportionment plan this past year, principles of federalism would strongly compel us to attempt to follow that current and clear expression of State policy as to the size of the Legislature. Such was not the case.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971). See also, *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

The Legislature cannot be apportioned into 67 Senate Districts and 135 House Districts without violating either the Federal or State Constitutions.

The practice of the last fifty-four years of dividing one Senatorial District into three House Districts, while all other Senatorial Districts are divided into two House Districts, cannot be continued without violating the equal protection requirements.

The alternative of having one at-large House District would be contrary to the provisions of Article 4, Section 24, of the Minnesota State Constitution, which provides that no representative district shall be divided in the formation of a Senate District. Moreover, this alternative would impose an impossible burden on candidates for the at-large seat.

We thus find that the size of the Legislature must be changed, and we consider federal constitutional requirements and State policy to determine the appropriate size.

(1) The larger the population of each Senate and House District, the more closely can the equal protection (one man-one vote) requirements be met and still give effect to the State policy of adhering to the boundaries of political subdivisions. Conversely, the smaller the population of each district, the greater the likelihood that the deviations will be higher than are acceptable or that artificial boundaries will result.

(2) State policy with respect to the size of the Legislature is difficult to discern. The State Constitution does not fix the size. The size has been changed from time to time in the ap-

portionment process;[2] and when it was last changed in 1966, the size was fixed "until a new apportionment shall have been made." Minnesota Statutes, 1969, 2.021. The 1971 Legislative Apportionment Plan was not approved by the Governor, and thus cannot be taken as a current expression of State policy as to size,[3] particularly as the Governor recommended that the size of the Legislature be reduced in a Special Message to the Legislature[4] and vetoed the Legislative Plan.

(3) There is merit in having an odd-numbered Senate and House, particularly as Minnesota is a state with two strong and rather evenly divided political parties. Furthermore, legislative apportionment plans have, more often than not, provided for an odd-numbered Senate and House.[5]

Considering all factors, we find that federal constitutional and State policy requirements can best be harmonized by

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[2] The size of the Legislature has been changed ten times since 1857. The changes are as follows:

	Senate	*House*	*Total*
1857	37	80	117
1860	21	42	63
1866	22	47	69
1871	41	106	147
1881	47	103	150
1889	54	114	168
1897	63	119	182
1913	67	130	197
1917	67	131	198
1959	67	135	202
1966	67	135	202

1957-58 Minnesota Legislative Manual 127; Laws 1913, Ch. 91; Laws 1917, Ch. 217; Laws 1959, Ch. 45; Laws 1966 Extra Session, Ch. 1.

[3] Under Minnesota law, a legislative apportionment act is subject to the Governor's veto. *Duxbury v. Donovan*, 272 Minn. 424, 138 N.W. 2d 692 (1965).

[4] See this Court's Memorandum in Support of Order, November 26, 1972, n. 2.

[5] See n. 2, *supra*.

having 35 Senate Districts and by dividing each Senate District into three House Districts. By so doing, we can best meet equality of population standards, prevent overlapping of Senate and House Districts, and retain an odd number of Senate and House Districts.

We recognize that these purposes might also be met by having a Senate of 45 members and a House of 135 members, or a Senate of 33 members and a House of 99 members. But we feel that we can most closely meet all of the requirements by setting the size at the levels we have.

Furthermore, persuasive arguments have been made that positive benefits to the State will accrue by substantially reducing the size of the Senate and moderately reducing the size of the House. Some of these benefits were outlined in our memorandum of November 26, 1971, and need not be repeated here.

Finally, we repeat that it is not our desire to fix for the future the size of the Senate and the House in Minnesota. The Legislature may, if it desires, apportion the State in any manner that it sees fit, consistent with the equal protection clause of the United States Constitution, either before or after the 1972 general elections.

The Court reserves the right to file a more detailed memorandum in support of its order at a later date.

SECOND READING OF SENATE BILL

S. F. No. 80 was read the second time.

MOTIONS AND RESOLUTIONS—Continued

Mr. Holmquist for the Committee on Rules and Administration introduced Senate Resolution No. 3.

A senate resolution relating to reapportionment; authorizing participation in the state and federal courts.

WHEREAS, it is the duty and responsibility of the legislature from time to time to prescribe the bounds of congressional, senatorial and representative districts; and

WHEREAS, the legislature has apportioned anew the senators and representatives among the several districts in the years 1959 and 1966; and

WHEREAS, the most recent enumeration of the inhabitants of this state made by the authority of the United States was not completed prior to the adjournment sine die of the 1971 regular session of the legislature, or the adjournment of the 1971 special session, and is not yet complete; and

WHEREAS, the senate through its committee on elections and reapportionment has been diligently and continuously engaged in the business of studying and evaluating the various forms and numbers of senatorial districts despite the unavailability of complete enumeration information but nonetheless has, together with the house of representatives, prescribed the bounds of congressional districts, which prescription has become chapter 897 of the laws of 1971; and both bodies have passed, during the 1971 special session, H. F. No. 76, a bill for an act relating to the legislature; apportioning legislative districts; repealing Minnesota Statutes 1969, Sections 2.031

to 2.712, which bill is now in conference between the two Houses; and

WHEREAS, certain citizens have invoked the jurisdiction of the United States District Court challenging the propriety and constitutionality of the existing legislative apportionment created by Extra Session Laws 1966, Chapter 1, by serving upon certain elected state and local officials a summons and complaint styled *Richard A. Beens et al, plaintiffs, vs. Arlen Erdahl et al,* defendants, docketed as Civil action No. 4-71, civil 151; and

WHEREAS, said complaint prays that further elections of members of the legislature be enjoined and that the court take certain other affirmative actions all in derogation of the rights and responsibilities of the legislature and its members; and

WHEREAS, it appears that the constitutional rights and interests of the senate might be jeopardized by future actions of the court or the parties in the case at bar unless the senate is adequately represented and afforded an opportunity t obe heard on its own behalf of the citizens of the state; now, therefore,

BE IT RESOLVED, by the Senate of the State of Minnesota, that the Office of Senate Counsel be and it is hereby authorized and directed to take such steps as may be necessary to represent the interests and will of this body to the extent deemed necessary in both state and federal court actions involving the prescription of the bounds of senatorial and representative districts, the apportionment of senators and representatives among those districts, and the orderly process of elections therefrom, and that necessary fees and expenses relative thereto be authorized for payment upon approval by

the Committee on Rules and Legislative Administration, to be paid from the standing committee fund of the Senate.

Mr. Holmquist moved that the foregoing resolution be adopted.

The question being taken on adoption of the resolution.

And the roll being called, there were yeas 56 and nays none, as follows:

Those who voted in the affirmative were:

Anderson, E. J.	Hansen, Mel	Olson, H. D.
Anderson, J. C.	Hanson, N. W.	Olson, J. L.
Anderson, J. T.	Holmquist	O'Neill
Arnold	Holsten	Overgaard
Ashbach	Hughes, J. M.	Palmer
Benson	Jensen, C. A.	Parish
Bergerud	Josefson	Perpich, A. J.
Blatz	Jude	Perpich, G.
Borden	Kalina	Pillsbury
Brown	Kirchner	Purfeerst
Chmielewski	Krieger	Schrom
Conzemius	Larson	Sinclair
Davies	Laufenburger	Tennessen
Doty	Mammenga	Thorup
Frederick	McCarty	Ukkelberg
Gearty	McCutcheon	Wegener
Glewwe	Metcalf	Willet
Gustafson	Moe	Wolfe
Hansen, Baldy	Olson, A. G.	

Which motion prevailed. So the resolution was adopted.

RECONSIDERATION

Mr. Kalina moved that the vote whereby Senate Resolution No. 3 was passed by the Senate on July 31, 1971, be now reconsidered.

The question being taken on the motion of Mr. Kalina.

And the roll being called, there were yeas 31 and nays 33, as follows:

Those who voted in the affirmative were:

Anderson, J. C.	Hansen, Baldy	Parish
Arnold	Hanson, N. W.	Perpich, A. J.
Benson	Hughes, J. M.	Perpich, G.
Borden	Jensen, V. K.	Purfeerst
Chenoweth	Kalina	Schrom
Chmielewski	Laufenburger	Tennessen
Coleman	Mammenga	Thorup
Conzemius	Moe	Wegener
Davies	Novak	Willet
Doty	Olson, A. G.	
Gearty	Olson, H. D.	

Those who voted in the negative were:

Anderson, E. J.	Holsten	Ogdahl
Anderson, J. T.	Hughes, Keith	Olson, J. L.
Ashbach	Jensen, C. A.	O'Neill
Blatz	Josefson	Overgaard
Brown	Kirchner	Palmer
Dosland	Krieger	Pillsbury
Frederick	Larson	Popham
Gage	McCarty	Renneke
Glewwe	McCutcheon	Sinclair
Hansen, Mel	Metcalf	Ukkelberg
Holmquist	Nyquist	Wolfe

Which motion did not prevail.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-71-CIV. 151

AFFIDAVIT OF JOHN CHENOWETH

State of Minnesota
County of Ramsey—ss.

John Chenoweth first being duly sworn deposes and says:

That he is the duly elected Minnesota State Senator from the 44th District;

That he was absent from the Senate on July 31, 1971 when Senate Resolution 3 was adopted and did not vote in favor of said Resolution;

That he believes that Senate Resolution 3 had not been read previously on the Senate floor and was not fully debated but hastily adopted;

That had he voted on Senate Resolution 3 he would have voted in the negative;

That he has read said resolution and disagrees with it in several material aspects;

That the position taken by Senate Counsel is his brief submitted to the Court does not reflect the views of affiant;

Further affiant sayeth not except that this affidavit is made in opposition to the Motion to Intervene, filed in the name of the Sixty-seventh Minnesota Senate.

JOHN CHENOWETH

Subscribed and sworn to before me this 6th day of October, 1971.—Alan W. Weinblatt, Notary Public, Ramsey County, Minn. My Commission Expires Aug. 6, 1976.

No. 71-1024

AFFIDAVIT

State of Minnesota
County of Hennepin

Edward Gearty being first duly sworn deposes and says that he is the duly elected and acting Minnesota State Senator from the 39th Senate District. That he was present in the Minnesota State Senate on July 31, 1971 when the Senate adopted Senate Resolution No. 3, and your affiant voted in the affirmative;

That in voting in favor of Senate Resolution No. 3 your affiant did not intend to authorize Senate Counsel to take the within appeal to the United States Supreme Court and had such intention been expressed on behalf of Senate Resolution No. 3 your affiant would not have voted in favor thereof.

That your affiant expressly states that the Office of Senate Counsel does not speak for him in the Supreme Court of the United States in the within matter; and

That this affidavit of disavowal is made in support of plaintiff-appellees motion to dismiss the appeal and to request the Court to relieve affiant from the unauthorized acts of Senate Counsel pursuant to Minnesota Statutes §481.09.

Further affiant sayeth not.

EDWARD GEARTY

Subscribed and sworn to before me a notary public this 1st day of March 1972.—J. W. Ronning, Notary Public Hennepin County, Minn. My Commission Expires Feb. 26, 1979.

IN THE
SUPREME COURT OF THE
UNITED STATES
No. 71-1024

AFFIDAVIT

County of St. Louis
State of Minnesota

Earl Gustafson being first duly sworn deposes and says that he is the duly elected and acting Minnesota State Senator from the 60th Senate District. That he was present in the Minnesota State Senate on July 31, 1971 when the Senate adopted Senate Resolution No. 3, and your affiant voted in the affirmative;

That in voting in favor of Senate Resolution No. 3 your affiant did not intend to authorize Senate Counsel to take the within appeal to the United States Supreme Court and had such intention been expressed on behalf of Senate Resolution No. 3 your affiant would not have voted in favor thereof.

That your affiant expressly states that the Office of Senate Counsel does not speak for him in the Supreme Court of the United States in the within matter; and

That this affidavit of disavowal is made in support of plaintiff-appellees motion to dismiss the appeal and to request the Court to relieve affiant from the unauthorized acts of Senate Counsel pursuant to Minnesota §481.09.

Further affiant sayeth not.

EARL GUSTAFSON

Subscribed and sworn to before me a notary public this 1st day of March 1972.—Galen C. Wilson, Notary Public St. Louis County, Minn. My Commission Expires Jan. 22, 1976.

IN THE
SUPREME COURT OF THE
UNITED STATES
No. 71-1024

AFFIDAVIT

County of St. Louis
State of Minnesota

Ralph Doty being first duly sworn deposes and says that he is the duly elected and acting Minnesota State Senator from the 61st Senate District. That he was present in the Minnesota State Senate on July 31, 1971 when the Senate adopted Senate Resolution No. 3, and your affiant voted in the affirmative;

That in voting in favor of Senate Resolution No. 3 your affiant did not intend to authorize Senate Counsel to take the within appeal to the United States Supreme Court and had such intention been expressed on behalf of Senate Resolution No. 3 your affiant would not have voted in favor thereof.

That your affiant expressly states that the Office of Senate Counsel does not speak for him in the Supreme Court of the United States in the within matter; and

That this affidavit of disavowal is made in support of plaintiff-appellees motion to dismiss the appeal and to request the Court to relieve affiant from the unauthorized acts of Senate Counsel pursuant to Minnesota §481.09.

Further affiant sayeth not,

RALPH R. DOTY

Subscribed and sworn to before me a notary public this 3rd day of March 1972.—Adalee Flokstra, Notary Public St. Louis County, Minn. My Commission Expires Feb. 20, 1975.

IN THE
SUPREME COURT OF THE
UNITED STATES
No. 71-1024

AFFIDAVIT

State of Minnesota
County of

A. J. Perpich being first duly sworn deposes and says that he is the duly elected and acting Minnesota State Senator from the 62nd Senate District. That he was present in the Minnesota State Senate on July 31, 1972 when the Senate adopted Senate Resolution No. 3, and your affiant voted in the affirmative;

That in voting in favor of Senate Resolution No. 3 your affiant did not intend to authorize Senate Counsel to take the within appeal to the United States Supreme Court and had such intention been expressed on behalf of Senate Resolution No. 3 your affiant would not have voted in favor thereof.

That your affiant expressly states that the Office of Senate Counsel does not speak for him in the Supreme Court of the United States in the within matter; and

That this affidavit of disavowal is made in support of plaintiff-appellees motion to dismiss the appeal and to request the Court to relieve affiant from the unauthorized acts of Senate Counsel pursuant to Minnesota §481.09.

Further affiant sayeth not.

SENATOR TONY PERPICH

Mar. 7, 1972

Eveleth, Minn.

(Jurat)

SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
APR 12 1972
JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

Consolidated Cases Nos. 1024, 1145

SIXTY-SEVENTH MINNESOTA STATE SENATE,
Appellant-Intervenor,

vs.

RICHARD A. BEENS, PHILLIP KRASS, and LAWRENCE E. MEUWISSEN,
Appellees,

ARLEN ERDAHL, GEORGE B. HICKEY, CHARLES LeFEBVRE, JOSEPH W. NOTERMAN, and WILLIAM J. SCHNEIDER,
Appellees,

ROLLIN H. CRAWFORD, JAMES M. KING, and ROBERT C. VOSS,
Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

APPELLANT'S BRIEF IN RESPONSE TO MOTION TO DISMISS OR AFFIRM

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IN THE

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SIXTY-SEVENTH MINNESOTA STATE SENATE,

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Appellees,

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Appellees-Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

APPELLANT'S BRIEF IN RESPONSE TO MOTION TO DISMISS OR AFFIRM

This response to Appellees' Rule 16 motion to dismiss or affirm, for the convenience of the Court, will follow the Appellees' sequence of argument.

I

Appellant Has Authority to Prosecute This Appeal

Senate Resolution 3 clearly authorizes this appeal concerning the reduction of members in the Minnesota State Legislature. The full text of the Resolution may be found at Motion to Dismiss or Affirm, A-45 - A-47. The Office of Senate Counsel is

> "authorized and directed to take such steps as may be necessary to represent the interests and will of this body (the Senate) to the extent deemed necessary in both state and federal court actions involving the prescription of the bounds of senatorial and representative districts, the apportionment of senators and representatives among those districts, and the orderly process of election therefrom." Senate Resolution 3.

Obviously the Office of Senate Counsel deems this appeal necessary, it is related to the subject of apportionment, more specifically the number of senatorial and representatives districts, and this appeal is an action in a federal court within the meaning of the resolution.

Appellees correctly recognize that a motion to reconsider Senate Resolution 3 failed of passage. (Motion to Dismiss or Affirm, A-48). Hence, the resolution remains in force as expressing the will of the body. Neither affidavits by dissident

members nor attempted intervention by other members can alter the authority granted the Office of Senate Counsel by Senate Resolution 8 to prosecute the present appeal.

Appellees' contend that the Sixty-seventh Minnesota State Senate is not a legal entity for purposes of intervention or appeal. This Court has squarely rejected this contention. *Silver v. Jordan*, 241 F. Supp. 576 (N.D. Cal. 1965), *aff'd* 381 U.S. 415 (1965). In *Silver v. Jordan, supra*, the California State Senate was permitted to intervene as a matter of right:

> The California State Senate's motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court. F. ed. R. Civ. P. 24(a)(2); . . . *California v. United States*, 180 F. 2d 596 (9th Cir. 1950); *Kozak v. Wills*, 278 F. 2d 104 (8th Cir. 1960); *Ex Parte D. O. McCarthy*, 29 Cal. 395 (1966). 241 F. Supp. at 579.

See also *Dungan v. Sawyer*, 250 F. Supp. 480 (D. Nev. 1965). The trial court has also properly rejected this contention in the instant action. (Motion to Dismiss or Affirm, A-24 - A-25).

II

This Court Has Jurisdiction of the Appeal Pursuant to 28 U.S.C., § 1253

A. The appeal is from an injunction restraining the enforcement, operation or execution of any state statute.

It is clear that the plan or apportionment promulgated by the District Court is an order granting an injunction. It restrains "the action of any officer . . . in the enforcement or execution of . . . [a] statute." 28 U.S.C. 2281. The order appealed from provides:

> We modify our injunction of November 15, 1971, to the extent that we enjoin the defendants herein, including Arlen Erdahl, Secretary of State of the State of Minnesota, and all County Auditors of the State of Minnesota, from holding or conducting any future elections for the Minnesota Legislature under any apportionment plan except that which we adopted today . . . Motion to Dismiss or Affirm, A-11.

The Minnesota election officials are enjoined from conducting elections pursuant to Minnesota Statutes 1969, Sec. 2.021-2.712, and except as provided in the mandatory injunction in the Court's order. Appellant certainly does not and has not conceded the propriety of the injunctive order. Appellees' statement to the contrary is a flagrant misstatement of fact. See e.g. Motion to Dismiss or Affirm, 13; 14, passim. Appellant State Senate contends that Minnesota Statutes 1969, §§ 2.021 and 2.031 do not violate the Constitution of the United

States and are binding on the Court as expressions of a valid state apportionment policy.

B. The appeal was from a suit required to be heard and determined by a three-judge court.

As previously noted the District Court's order and plan of apportionment restrained "the action of any officer . . . in the enforcement or execution of . . . [a] statute." 28 U.S.C. 2281. The final plan of apportionment was a mandatory injunction enjoining the operation of a statute of statewide application and imposing a new scheme of apportionment. Hence, a three-judge panel was required to issue the relief prayed for by Appellees. This Court has often held that the issuance of a plan of reapportionment is a proper function of a three-judge panel and supports a direct appeal to this Court. *Ely v. Klahr*, 403 U.S. 108 (1971); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Connor v. Johnson*, 402 U.S. 690 (1971). Finally, it would appear that Appellees, having earnestly requested the three-judge court to issue the plan of legislative apportionment, would now be estopped from contesting the necessity for them to do so. This argument of Appellees appears frivolous.

III

The Judgment of the District Court Should Not Be Affirmed Summarily Because It Presents a Substantial Question Within the Meaning of Rule 16(1)(C), Supreme Court Rules

Appellant in its jurisdictional statement has already demonstrated that this appeal presents substantial questions worthy of plenary consideration by this Court. Appellees, upon cursory and superficial analysis, appear to contend the case is not worthy of plenary consideration, since it presents at most a question of degree. Few legal questions at bottom are not questions of degree. Appellant has demonstrated that the case presents a fundamental question of state sovereignty and the remedial powers of a federal court. No more substantial question vital to the concept of federalism may be imagined. Appellant contends that the District Court in fashioning a plan of reapportionment is bound by Minnesota Statutes 1969, § 2.031, Subd. 1, which provides:

> The representatives in the senate and house of representatives are apportioned throughout the state in 67 legislative districts.

The District Court, to the extent constitutionally permissible, is also bound by Minnesota Statutes 1969, § 2.021, which provides:

> For each legislature until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 135 members.

Appellant, contrary to the assertion of Appellees' blatant misstatement of fact, does not concede the unconstitutionality of Minnesota Statutes 1969, §§ 2.021, 2.031. (Motion to Dismiss or Affirm, 23). Appellant contends that the District Court erred in arbitrarily disregarding the mandate of Minnesota Statutes 1969, §§ 2.021, 2.031.

Appellees have adopted the District Court's conclusion there is no controlling expression of state apportionment policy. (Motion to Dismiss or Affirm, 24-25). Prior to 1913 there appeared to have been no fixed state apportionment policy. Since 1913, however, the Legislature has provided for 67 legislative districts and has resisted consistently bills seeking to reduce the number of legislative districts and the number of members in the Minnesota State Legislature. The inability to discern a state policy disregards history and conveniently disregards the binding effect of Minnesota Statutes 1969, §§ 2.021, 2.031, to the extent that the same are consistent with the United States Constitution. The words "until a new apportionment shall have been made" are not found in Minnesota Statutes 1969, § 2.031, and there is no reason for reading in such a phrase. Moreover, the phrase, found in Minnesota Statutes 1969, § 2.021, obviously contemplates a legislative reapportionment, not a judicial one. That the District Court in fashioning equitable remedies in legislative apportionment cases is bound by state apportionment policy has been often recognized by this Court. See e.g. *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971).

Appellees apparently recognize no limitation on the authority of a Federal District Court in fashioning a reapportionment plan. That notion has not only been rejected by this Court, *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971), but it is also patently frivolous. If a District Court is free to reduce

substantially the number of members in the Minnesota Legislature, it might also require a unicameral legislature, or dictate the 10 member council of "philosopher-kings" desired by Plato. As should be apparent, such questions are matters of political philosophy for legislative determination, beyond the jurisdiction of a District Court. All parties to this action so argued before the District Court. The District Court went far beyond any concept of constitutional necessity and legislated its own precept of political philosophy in derogation of legislative authority and controlling state apportionment policy. Under such circumstances a decision by this Court is necessary to remedy this unprecedented usurpation of legislative authority.

IV

The Judgment of the District Court Should Not Be Affirmed Summarily as a Temporary Provisional Remedy

Appellees apparently contend that the transparent "provisional nature" of the court-ordered reapportionment plan should isolate it from judicial review. Appellees cite no authority for such a novel proposition since none exists. Any court-ordered plan of reapportionment is only effective pending an apportionment by a state legislature. *Connor v. Johnson*, 265 F. Supp. 492, 494 (D. Miss. 1967), *aff'd*, 386 U.S. 483 (1967). That the Legislature may rectify the error of the District Court provides no basis for arguing that this Court should not exercise its authority to correct the District Court for exceeding the proper limits of its equitable powers. This Court has rejected repeatedly the contention of Appellees. *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Ely v. Klahr*, 403 U.S. 108

(1971); *Connor v. Johnson*, 402 U.S. 690 (1971); *Scott v. Germano*, 381 U.S. 407 (1965).

V

Failure of This Court to Dismiss the Appeal or Affirm the Order of January 25, 1972, Will Work No Hardship Upon the Electoral Process of the State

Appellees contend that the first statutory step in the electoral process, the precinct caucuses, have already taken place and the political party conventions for the endorsement of candidates are now taking place. (Motion to Dismiss or Affirm, 32). In Minnesota, all members of the state legislature hold a nonpartisan office. Minnesota Statutes 1969, § 202.03, subd. 1. The non-partisanship of the members of the Legislature is the hallmark of the Minnesota State Legislature. Hence the activities of the political parties are totally irrelevant to the instant case.

That no harm would result to the electoral process by a plenary consideration of this case is readily demonstrated. The last legislative apportionment act, Extra Session Laws 1966, ch. 1, was not signed by the Governor until May 20, 1966, and no harm to the elective process of the state resulted. Finally, if necessary, the District Court may issue orders extending the time limitations imposed by state law that may interfere with the implementation of a second plan of legislative apportionment. *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, (1971).

VI

CONCLUSION

For the reasons stated in the jurisdictional statements already filed by the Appellant and the grounds stated herein, this Court should note probable jurisdiction and order a plenary hearing on the merits.

Respectfully submitted,

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SIXTY-SEVENTH MINNESOTA STATE SENATE v. BEENS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

No. 71-1024. Decided April 29, 1972*

A three-judge District Court found that the Minnesota Legislature was malapportioned and reduced the number of legislative districts from 67, the number established in 1913, to 35, thereby reducing the number of senators by almost 50%, and the number of representatives by nearly 25%. The court declared the entire 1966 apportionment act unconstitutional and enjoined state officials from conducting elections thereunder, later modifying that injunction so as to enjoin any future elections under any plan other than the one adopted by the court "or a constitutional plan adopted after this date by the State of Minnesota." Appellant, the Minnesota State Senate, intervened in the apportionment challenge below. *Held:*

1. The appellant had the right to intervene, as the District Court's orders directly affected the senate, which is an appropriate legal entity for the purpose of intervention. *Silver* v. *Jordan*, 241 F. Supp. 576, aff'd, 381 U. S. 415.

2. The District Court's injunction with respect to the statutory sections fixing the number of legislative districts and the number of senators and representatives is sufficient to justify a direct appeal under 28 U. S. C. § 1253.

3. A federal reapportionment court should accommodate the relief ordered to the appropriate provisions of state statutes relating to the legislature's size as far as possible, and the action of the District Court here in so drastically changing the number of districts and the size of the houses of the state legislature is not required by the Federal Constitution and is not justified as an exercise of federal power.

336 F. Supp. 715, vacated and remanded.

PER CURIAM.

These two appeals are taken by the Minnesota State Senate from orders of a three-judge Federal District Court

*Together with No. 71-1145, *Sixty-Seventh Minnesota State Senate* v. *Beens et al.*, on appeal from the same court.

reapportioning the Minnesota Legislature. The appeals do not challenge the District Court's conclusion that the legislature is now malapportioned. And at this point they are not concerned with population variances or with other issues of the type customarily presented in reapportionment litigation. The controversy focuses, instead, on (a) the District Court's refusal to honor the Minnesota statute fixing the number of the State's legislative districts at 67 and (b) the court's proceeding, over the initial opposition of all parties (but upon the suggestion of two *amici*, the Lieutenant Governor and a representative), to reduce the number of legislative districts to 35, the number of senators by almost 50%, and the number of representatives by nearly 25%. We conclude that the District Court erred in its rulings. Accordingly, we summarily vacate the court's orders and remand the case for further proceedings promptly to be pursued.

I

The Minnesota Bicameral Legislature was last effectively apportioned in 1966. Ex. Sess. Laws 1966, c. 1.[1]

[1] This was the ninth general reapportionment in Minnesota since the adoption of the State's Constitution in 1857. Initially there were 26 districts, 37 senators, and 80 representatives. Minn. Const. 1857, Schedule § 12 (both versions). The succeeding plans, and the number of districts and legislators they specified, were

	Districts	Senators	Representatives
Laws 1860, c. 73	21	21	42
Laws 1866, c. 4	22	22	47
Laws 1871, c. 20	41	41	106
Laws 1881, c. 128	47	47	103
Laws 1889, c. 2	54	54	114
Laws 1897, c. 120	63	63	119
Laws 1913, c. 91	67	67	130
Ex. Sess. Laws 1959, c. 45	67	67	135

By Laws 1917, c. 217, the number of representatives was increased

Section 2.021 of Minn. Stat. (1969), the very first section of the 1966 act, states that, "until a new apportionment shall have been made," the State's senate shall consist of 67 members and its house of representatives of 135 members.[2] Section 2.031, subd. 1, from the second section of the 1966 act, prescribes 67 legislative districts for both the senate and the house.[3] Sections 2.041–2.711, inclusive, then delineate these 67 districts.[4] The State's Constitution, Art. IV, § 2, provides a legislator-population minimum ratio (one senator for every 5,000 inhabitants and one representative for every 2,000 inhabitants) and states, "The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof."

The 1970 federal census took place in due course. The Minnesota Legislature did not produce a reapportionment act during its regular session in 1971. One was passed on October 29, 1971, during the reconvening of an extra session called that year. The lawmakers adjourned *sine die* on October 30. The Governor, however, vetoed the act on November 1 and

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by one (the 65th district), but there was no accompanying general reapportionment.

Throughout this entire period of more than a century, the Minnesota Constitution, Art. IV, § 23, has called for reapportionment at the first legislative session after each federal census. See also *Magraw* v. *Donovan*, 163 F. Supp. 184 (Minn. 1958), and *Honsey* v. *Donovan*, 236 F. Supp. 8 (Minn. 1964).

[2] "2.021 NUMBER OF MEMBERS. For each legislature, until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 135 members."

[3] "2.031 APPORTIONMENT. Subdivision 1. The representatives in the senate and house of representatives are apportioned throughout the state in 67 legislative districts."

[4] Sections 2.041–2.711 were §§ 3–70, inclusive, of the 1966 act.

this 1971 reapportionment endeavor failed to become law.[5] The Governor has not called the legislature to another extra session for more work on reapportionment,[6] and it is not scheduled to meet again in regular session until January 1973. Minn. Const., Art. IV, § 1; Minn. Stat. § 3.01 (1969). The 1972 primary and general elections will take place in the interim. Minn. Stat. §§ 202.02 and 203.02 (1969). Thus the 1966 statute remains as the State's last effective legislative apportionment.

II

The original plaintiffs, who are among the appellees here, are three qualified voters of the State. By their complaint, filed in April 1971 and asserting jurisdiction under 28 U. S. C. §§ 1343 (3) and (4) and 42 U. S. C. §§ 1983 and 1988, they sought (a) a declaratory judgment that the 1966 act apportioning the legislature violates the Equal Protection Clause of the Fourteenth Amendment, (b) an injunction restraining the Minnesota Secretary of State and all county auditors from conducting future elections for legislators pursuant to that Act, and (c) reapportionment of the legislature by the federal court itself. The three-judge court was convened. The appellant, the Sixty-seventh Minnesota State Senate, intervened as a party defendant under Fed. Rule Civ. Proc. 24 (a).

The District Court, after hearings and with the assistance of stipulations, issued three significant orders: A. On November 15, 1971, it made appropriate findings, not challenged here as to their basic provisions,

[5] A legislative reapportionment act is subject to executive veto under Minn. Const., Art. IV, §§ 11 and 12, and Art. V, § 4. *Duxbury v. Donovan*, 272 Minn. 424, 138 N. W. 2d 692 (1965).

[6] Power is vested in the Governor to convene both houses of the legislature "on extraordinary occasions." Minn. Const., Art. V, § 4. This power is also recognized by Art. IV, § 1, of the Constitution.

and declared the 1966 act in its *entirety*, Minn. Stat. §§ 2.021–2.712 (1969), inclusive, violative of the Federal Constitution, enjoined the Secretary of State and the county auditors from conducting future elections under the Act, and appointed two Special Masters (a third was named later) to aid the court in formulating a new apportionment plan. See 336 F. Supp. 715, 718–719.

B. On December 3 it found "that it best can fulfill its duty of apportioning the Minnesota Legislature in accordance with the Constitution of the United States and with due regard for State policy" by dividing the State into 35 senatorial districts and dividing each senatorial district into three house districts, and ordered that the parties, intervenors, and *amici* could present plans for apportioning the legislature accordingly. In an accompanying memorandum the court said, "The only serious questions . . . are whether we have the authority to change the size of the Legislature; and if so, to what extent." It answered the first of these questions in the affirmative, quoting the following sentence from *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971):

> "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." 402 U. S., at 15.

The court stated that the legislature could not be apportioned into 67 senate districts and 135 house districts without violating either the Federal Constitution or the Minnesota Constitution; that the existing practice of dividing one senate district into three house districts and all others into two cannot be continued without violating the requirements of equal protection; that the greater the population of each district, the more closely

can the one man, one vote standard be met and still give effect to the state policy of adhering to the boundaries of political subdivisions; that state policy with respect to the legislature's size "is difficult to discern"; that the Governor had recommended a reduction in size; that there is merit in having an odd-numbered senate and house where, as in Minnesota, the State has "two strong and rather evenly divided political parties"; that federal constitutional and state policy requirements can best be harmonized by having 35 senate districts and by dividing each senate district into three house districts; that there are persuasive arguments that "positive benefits to the State will accrue by substantially reducing the size of the Senate and moderately reducing the size of the House"; and that "it is not our desire to fix for the future the size of the Senate and the House in Minnesota," for the legislature, if it wishes, may appropriately apportion. See 336 F. Supp., at 720–721.

C. On January 25, 1972, it entered its "Final Order and Plan of Apportionment" by which it adopted a plan therein described. The court also modified its injunction of November 15 so as to enjoin the state secretary and county auditors from conducting any future elections for the legislature under any plan other than the one adopted by the court "or a constitutional plan adopted after this date by the State of Minnesota." In accord with Minn. Const., Art. IV, § 24, 1972 elections under the new plan for all positions in the senate and house were ordered. 336 F. Supp. 715, 732.

The senate, as intervenor, first appealed from the orders of November 15, 1971, and December 3, 1971 (case No. 71–1024), and then from the order of January 25, 1972 (case No. 71–1145). Both appeals are under 28 U. S. C. § 1253. We denied the senate's motion to expedite the appeals, but granted its motion to consoli-

date them. 405 U. S. 985 (1972). We then granted its application for a temporary stay pending further order of the Court. *Post*, p. 905.

III

The appellees have moved to dismiss. Two grounds are asserted:

A. That the senate lacks authority and standing to prosecute the appeals. It is said that the senate's authorizing resolution does not entitle its counsel to take the appeals; that the resolution relates only to legislative district boundaries and not to their number; that the Office of Senate Counsel speaks only for certain members of the senate and not for the whole; that it is the legislature, and not just the senate, that is the legal entity concerned for purposes of the appeals; and that only the legislature has standing.

The authorizing senate resolution, however, is in broad terms:

> "BE IT RESOLVED, by the Senate of the State of Minnesota, that the Office of Senate Counsel be and it is hereby authorized and directed to take such steps as may be necessary to represent the interests and will of this body to the extent deemed necessary in both state and federal court actions involving the prescription of the bounds of senatorial and representative districts, the apportionment of senators and representatives among those districts, and the orderly process of elections therefrom . . . ." Journal of the Minnesota Senate 1971, 39th Day, p. 460.

The resolution was adopted July 31, 1971, by a 56-to-0 vote. A motion to reconsider made two and a half months later failed by a vote of 33-31. *Id.*, 40th day, at 492.

We are not inclined to read this authorizing resolution restrictively, as the appellees suggest. Certainly the present appeals are in a federal court action that concerns apportionment "and the orderly process of elections therefrom." And certainly the senate is directly affected by the District Court's order. That the senate is an appropriate legal entity for purpose of intervention and, as a consequence, of an appeal in a case of this kind is settled by our affirmance of *Silver* v. *Jordan*, 241 F. Supp. 576 (SD Cal. 1964), aff'd, 381 U. S. 415 (1965), where it was said:

> "The California State Senate's motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court." 214 F. Supp., at 579.

A group of senators thus had the right to intervene. The concurrence of the house was not necessary as it would be to enact legislation.

B. That the appeals are not from orders granting or denying injunctive relief, within the requirement of 28 U. S. C. § 1253. Although the orders of November 15, 1971, and January 25, 1972, specifically enjoin state and county officers, the appellees assert that the restraining portions of those orders are not now attacked and are conceded by the appellant. This, in our view, is too narrow an analysis. The order of November 15 clearly enjoins the state and county officers "from holding or conducting any future elections under the present Apportionment Statutes." That of January 25 does the same except with respect to the plan then adopted by the court or one thereafter validly adopted by the State. The Court's injunctive holding applies to §§ 2.031 and 2.021, respectively fixing the number of legislative districts and the number of senators and representatives, as well as to the succeeding sections determining the

boundaries of the 67 districts. The appellant's appeal relates to §§ 2.031 and 2.021. The court's injunction with respect to those sections is sufficient to justify a direct appeal under § 1253. *Gunn* v. *University Committee*, 399 U. S. 383 (1970), cited by the appellees, is inapposite.

IV

That the three-judge federal court possesses the power to reapportion the State's legislature when the applicable state statutes fall short of constitutional requirements is not questioned. *Reynolds* v. *Sims*, 377 U. S. 533, 586–587 (1964). The 1966 Minnesota apportionment legislation, the court found, in the light of the 1970 census figures no longer provided a constitutionally acceptable apportionment of either house. No one challenges that basic finding here, and we have no reason to rule otherwise. The 1971 legislature had endeavored to reapportion and, thus, to fulfill the requirement imposed upon it by Art. IV, § 23, of the State's Constitution.[7] See *Magraw* v. *Donovan*, 163 F. Supp. 184, 187–188 (Minn. 1958), and *Honsey* v. *Donovan*, 236 F. Supp. 8 (Minn. 1964). The legislature's efforts in that direction, however, were nullified by the Governor's veto of the Act it passed, an action the executive had the power to take. *Duxbury* v. *Donovan*, 272 Minn. 424, 138 N. W. 2d 692 (1965). The net result was the continuing applicability of the 1966 act. Under these circumstances judicial relief was appropriate.

[7] Art. IV, § 23. "The legislature shall have the power to provide by law for an enumeration of the inhabitants of this State, and also have the power at their first session after each enumeration of the inhabitants of this state made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article."

The three-judge court, however, was not content with devising judicial apportionment within the framework of the existing and otherwise valid statutory structure. Instead of recognizing the provision in Minn. Stat. § 2.021 (1969), that the state senate "is composed of 67 members and the house of representatives is composed of 135 members," and the further provision in § 2.031 that the senators and representatives "are apportioned throughout the state in 67 legislative districts," the court declared those sections invalid along with §§ 2.041–2.711, the provisions that delineate the boundaries of the specified 67 legislative districts.

We need not review at length the several pronouncements of this Court relating to state legislative reapportionment. The pertinent cases, particularly those of June 15, 1964, and the guidelines they provide are well-known. It suffices to note that in *Reynolds* v. *Sims*, 377 U. S. 533 (1964), the Court stated that apportionment "is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites . . . ." 377 U. S., at 586.[8] But we also stated, "With respect to the operation of the Equal Protection Clause, it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions," and, then, "Clearly, courts should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions insofar as is possible." 377 U. S., at 584. And the Minnesota Constitution, Art. IV, § 23, vests the legislature with power to reapportion.

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[8] In the companion case of *Maryland Committee* v. *Tawes*, 377 U. S. 656, 676 (1964), the Court observed again that "primary responsibility for legislative apportionment rests with the legislature itself."

It follows from this that a federal reapportionment court should accommodate the relief ordered to the appropriate provisions of state statutes relating to the legislature's size insofar as is possible. We do not have difficulty, as the District Court professed to have, in discerning the State's policy as to the legislature's size. That policy, long in effect in Minnesota and restated no longer than six years ago in § 2.021, is for 67 senators and 135 representatives, and, in § 2.031, is for 67 legislative districts. These are figures that have been determined by the legislature and approved by the Governor of the State. The present Governor's contrary recommendation, although certainly entitled to thoughtful consideration, represents only the executive's proffered current policy, just as the reapportionment plan he vetoed on November 1, 1971, represented only the legislature's proffered current policy.

We note, in repetition, that the District Court invalidated the entire 1966 Act, §§ 2.021–2.712, despite the fact that the details of the legislative districts' configurations are included only in §§ 2.041–2.711. Section 2.021 merely specifies the number of senators and representatives; § 2.031 calls for the apportionment of those legislators throughout the State in 67 districts; and § 2.712 provided the effective date of the 1966 act, the efficacy of which, for the period prior to the 1970 census, is not at issue here. In the light of the State's policy of statutory severability, Minn. Stat. § 645.20 (1969),*

* "645.20 CONSTRUCTION OF SEVERABLE PROVISIONS. Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds

and recognizing that this specific number of legislative districts has been in effect in Minnesota since 1913 and through two succeeding reapportionments, we necessarily conclude that the District Court's invalidation of the six-year-old reapportionment law swept too broadly in nullifying statutory sections that are capable of standing alone.

We know of no federal constitutional principle or requirement that authorizes a federal reapportioning court to go as far as the District Court did and, thus, to bypass the State's formal judgment as to the proper size of its legislative bodies. No case decided by this Court has gone that far and we have found no district court decision that has employed such radical surgery in reapportionment. There are cases where judicial reapportionment has effectuated minor changes in a legislature's size. Nearly all those cases reflect an increase or decrease of only a few seats [10] and most appear to have been justified

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the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

The 1966 act did not state that its provisions shall not be severable. In contrast, Minnesota's immediately preceding apportionment act, Ex. Sess. Laws 1959, c. 45, did contain in its § 72 an express nonseverability provision; that provision was repealed by c. 1, § 71, of the 1966 act. The legislative intent in 1966 is thus apparent.

[10] *Sims* v. *Amos*, 336 F. Supp. 924, 936, 937 (MD Ala. 1972) (house reduced from 106 to 105 so as to have three times the number of senate seats); *Schaefer* v. *Thomson*, 251 F. Supp. 450 (Wyo. 1965), aff'd, 383 U. S. 269 (1966) (senate increased from 25 to 30 on agreement of the parties and in accord with the state constitution); *Klahr* v. *Goddard*, 250 F. Supp. 537 (Ariz. 1966) (senate reduced from 31 to 30 and house from 80 to 60. The preservation of county lines, as prescribed by the State's constitution, Art. 4, pt. 2, § 1, was an announced consideration in this substantial house reduction which no one opposed. No appeal was taken); *Herweg* v. *Thirty Ninth Legislative Assembly*, 246 F. Supp. 454 (Mont. 1965) (senate reduced from 56 to 55 and house increased from 94

by a state constitutional demand, agreement of the parties, the observance of geographical boundaries, or mathematical convenience. We do not disapprove a court-imposed minor variation from a State's prescribed figure when that change is shown to be necessary to meet constitutional requirements. And we would not oppose the District Court's reducing, in this case, the number of representatives in the Minnesota house from 135 to 134, as the parties apparently have been willing to concede. That action would fit exactly the 67-district pattern. But to slash a state senate's size almost in half and a state house's size by nearly one-fourth is more than a mere minor variation. If a change of that extent were acceptable, so, too, would be a federal court's cutting or increasing size by 75% or 90% or, indeed, by prescribing a unicameral legislature for a State that has always followed the bicameral precedent. We repeat what was said recently in another legislative apportionment case: "The remedial powers of an equity court must be adequate to the task, but they are not unlimited." *Whitcomb* v. *Chavis*, 403 U. S. 124, 161 (1971).

In summary, the number of a State's legislative districts or the number of members in each house of its legislature raises no issue of equal protection unless the

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to 104. A constitutional provision, Art. VI, § 3, prohibiting the division of counties, was thereby observed); *Paulson* v. *Meier*, 246 F. Supp. 36 (ND 1965) (senate reduced from 53 to 49 and house from 106 to 98. The State's constitution, Art. II, § 26, mandated a senate of 49 members).

In other cases federal courts have altered the size of existing legislatures by approximating the number of legislators specified in new plans that the courts were nullifying. *Swann* v. *Adams*, 263 F. Supp. 225 (SD Fla. 1967); *WMCA, Inc.* v. *Lomenzo*, 238 F. Supp. 916 (SDNY 1965), aff'd, 382 U. S. 4 (1965). The state policy thus has been effectuated despite the invalidity of the legislature's proposed plan.

number so prescribed occasions significant and invalidating population deviations.

> "Determining the size of its legislative bodies is of course a matter within the discretion of each individual State. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies." *Reynolds* v. *Sims*, 377 U. S., at 581 n. 63.

See also *Connor* v. *Johnson*, 330 F. Supp. 506, 507 (SD Miss. 1971), order stayed on other grounds, 402 U. S. 690 (1971), opinion on remand, 330 F. Supp. 521 (SD Miss. 1971); *Bannister* v. *Davis*, 263 F. Supp. 202, 208 (ED La. 1966); *Dungan* v. *Sawyer*, 250 F. Supp. 480, 489 (Nev. 1965).

We conclude that the action of the three-judge court in so drastically changing the number of legislative districts and the size of the respective houses of the Minnesota Legislature is not required by the Federal Constitution and is not justified as an exercise of federal judicial power.

Our ruling here, of course, is no expression of opinion on our part as to what is desirable by way of legislative size for the State of Minnesota or for any other State. It may well be that 67 senators and 135 representatives make a legislature of unwieldy size. That is a matter of state policy. We certainly are not equipped—and it is not our function and task—to effectuate policy of that kind or to evaluate it once it has been determined by the State. Neither is it the function and task of the Federal District Court. Size is for the State to determine in the exercise of its wisdom and in the light of its awareness of the needs and desires of its people.

The orders of the District Court are vacated and the cases are remanded for further proceedings consistent

with this opinion. The District Court is instructed to give this matter priority and to act promptly and forthwith so that the State's 1972 electoral process may get under way with assurance as soon as possible. It is already late in the day, but the maintenance of legislative districts long in effect provides a minimum of disruption even now.[11]

The judgment in these cases shall issue forthwith.

It is so ordered.

MR. JUSTICE STEWART, dissenting.

It is undisputed here that the apportionment of the Minnesota State Legislature violated the Equal Protection Clause of the Fourteenth Amendment. Thus it was incumbent upon the three-judge federal court to devise a constitutional reapportionment, unless and until the Minnesota Legislature and Governor could agree upon and enact a new and constitutional reapportionment of their own. The only question presented by these appeals is whether the three-judge court abused its equitable discretion by devising the reapportionment plan that it did—a plan that called for a reduction in the size of both houses of the state legislature.

There is no doubt that "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and

[11] The 1972 general election in Minnesota will take place November 7. The primaries are scheduled for September 12. Candidates may file between July 5 and July 18. A legislative candidate must establish residence in his district by May 7. Minn. Stat. §§ 203.02, 202.02, 202.04; Minn. Const., Art. IV, § 25. Inasmuch as the Minnesota Legislature is nonpartisan, Minn. Stat. § 202.03, subd. 1, the earlier dates for political party precinct caucuses and party conventions have no relevance in this case. If time presses too seriously, the District Court has the power appropriately to extend the time limitations imposed by state law. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15 (1971).

flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15. At the same time "[t]he remedial powers of an equity court . . . are not unlimited." *Whitcomb v. Chavis*, 403 U. S. 124, 161. In the reapportionment context, it is the duty of a court seeking to remedy an unconstitutional apportionment to right the constitutional wrong while minimizing disturbance of legitimate state policies.

In these cases, the three-judge court appears conscientiously to have undertaken this task. It clearly recognized that the size of the houses of the Minnesota Legislature set by state statute was a state policy deserving respect. But it also recognized that there were several other legitimate state policies at stake—for one, the conformance of legislative district boundaries to political jurisdictional boundaries. The three-judge court also found that these policies were, unfortunately, in conflict. It stated:

> "The larger the population of each Senate and House District, the more closely can the equal protection (one man-one vote) requirements be met and still give effect to the State policy of adhering to the boundaries of political subdivisions. Conversely, the smaller the population of each district, the greater the likelihood that the deviations will be higher than are acceptable or that artificial boundaries will result."

Faced with this perceived conflict among legitimate state policies, the three-judge court weighed those policies and decided that preservation of political jurisdictional boundaries should take precedence over preservation of the present size of the senate and the house.[1]

[1] The court also was careful to recognize another state policy—that there should be an odd number of legislators in each house so as to minimize the risk of tie votes.

Perhaps the three-judge court's assessment of the relative weights of what it saw as competing state policies was mistaken. Perhaps its accommodation of those policies was also mistaken. But those judgments by the three-judge court were based on long and careful study of the distribution of population in Minnesota and of the possible alternative apportionments of the legislature.

This Court chooses to act on these appeals summarily. Yet we do not have before us all the population statistics and jurisdictional and district maps that were before the three-judge court. We do not have the benefit of the reports of two Special Masters that were available to the three-judge court. We do not even have briefs on the merits of this case. And, of course, we have not heard oral arguments. For these and other reasons we are simply not able at this point even to begin to evaluate the three-judge court's exercise of its remedial power in equity.

Surely, if state policies are in real conflict and if, as the three-judge court found, equal protection requirements cannot be met without sacrificing one of these policies, then the cases are very difficult. I certainly cannot say, on the basis of the information before us, that the three-judge court clearly overstepped its equitable discretion in its resolution of the problem. As the Court recognizes today, there is no rigid and absolute limit on a court's equitable discretion to order changes in the size of legislative bodies in order to remedy an unconstitutional apportionment. Every case is different, and these questions are inevitably questions of degree.

I have disagreed with the Court's Procrustean view of the Fourteenth Amendment's substantive requirement of "one man, one vote." [2] But until and unless those estab-

[2] See, *e. g.*, *Lucas* v. *Colorado Gen. Assembly*, 377 U. S. 713, 744; *Swann* v. *Adams*, 385 U. S. 440, 447. See also *Wells* v. *Rockefeller*, 394 U. S. 542, 549.

lished requirements are modified, the federal courts are often going to be faced with hard remedial problems such as those presented here. Difficult problems produce solutions that are difficult to review, even after full briefing and oral argument. I cannot believe that summary action here is either wise or appropriate, and I therefore respectfully dissent.